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No. 643

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United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 24126—October Term, 1956

UNITED STATES OF AMERICA,

Appellee,

v.

SIMON SILVERMAN, also known as Sid Taylor, JOSEPH DIMOW, ROBERT CHAMPION EKINS, JACOB GOLDRING, MARTHA STONE, also known as Mrs. Emil Asher,

Appellants.

ON APPEAL FROM JUDGMENTS OF CONVICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE UNITED STATES AND APPENDICES

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United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 24126—October Term, 1956

UNITED STATES OF AMERICA,

Appellee,

v

SIMON SILVERMAN, also known as Sid Taylor, JOSEPH DIMOW, ROBERT CHAMPION EKINS, JACOB GOLDRING, MARTHA STONE, also known as Mrs. Emil Asher,

Appellants.

ON APPEAL FROM JUDGMENTS OF CONVICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE UNITED STATES

Preliminary Statement

These are consolidated appeals from judgments of conviction entered against each of the five appellants on April 20, 1956, in the United States District Court for the District of Connecticut. Appellants were convicted under an indictment charging conspiracy to violate the Smith Act, 54 Stat. 671, 18 U. S. C. 10 (1946 Ed.), 18 U. S. C. 2385 (1948 Ed.) while it remained in force, and thereafter 18 U. S. C. 371 (1948 Ed.), the general conspiracy statute.

Appellants Simon Silverman, Martha Stone, Jacob Goldring and Robert Ekins were sentenced to imprisonment for a term of four years; appellant Joseph Dimow was

sentenced to imprisonment for a term of three years. Notices of appeal were filed on April 20, 1956.[1]

Statutes Involved

Title 18, U. S. C. (1948 Ed.), §2385 is based on Section 2 of the Smith Act, which was included in Title I of the Alien Registration Act of June 28, 1940, 54 Stat. 671 (18 U. S. C. (1946 Ed.), §10). Title 18, U. S. C., §2385 was adopted June 25, 1948, and provides as follows:

"§2385. Advocating overthrow of Government.

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruc-

[1] James Tate a co-defendant who was also convicted, and received a suspended sentence, did not join in this appeal. Another defendant, Alfred Marder, was found not guilty by the jury. In the case of the remaining defendant, Sidney Resnick, the jury was unable to reach a verdict.

tion of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof——

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction."

The conspiracy provision found in Section 3 of the Smith Act, 54 Stat. 671 (18 U. S. C. (1946 Ed.), §11), was omitted in the recodification of Title 18, United States Code, because it was covered by the general conspiracy statute, Title 18, U. S. C. (1948 Ed.), §371. Title 18, U. S. C. (1948 Ed.), §371 was adopted June 25, 1948 and provides as follows:

"§371. Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

Section 3 of the Smith Act, 54 Stat. 671 (18 U. S. C. (1946 Ed.), §11) provided as follows:

"§3. It shall be unlawful for any person to at-

tempt to commit, or to conspire to commit, any of the acts prohibited by the provisions of * * * this title."

The Indictment

The indictment upon which appellants were convicted was returned by a Grand Jury for the United States District Court for the District of Connecticut on March 4, 1955. The indictment charged that from April 1, 1945, to the date of the indictment appellants unlawfully, wilfully, and knowingly conspired with each other and sixteen named co-conspirators[2] and with divers other persons unknown to the Grand Jury to commit offenses against the United States prohibited by the Smith Act in violation of 18 U. S. C. 371, by (1) unlawfully, wilfully and knowingly advocating and teaching the duty and necessity of overthrowing the government of the United States by force and violence as speedily as circumstances would permit.[3]

The indictment alleged the following means of executing the conspiracy: (1) that appellants and co-conspirators would become members, officers and functionaries of and assume leadership over the Communist Party and responsibility for carrying out its policies and activities; (2) that they would cause clubs and other units of the

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[2] The co-conspirators, who are alleged in the indictment were the defendants whose conviction was upheld in *Dennis* v. *United States*, 341 U. S. 494. Also alleged as a co-conspirator was William Z. Foster, National Chairman of the Communist Party, who was indicted in the *Dennis* case, but was not tried because of illness. Also alleged as a co-conspirator was Elizabeth Gurley Flynn, who was convicted in *United States* v. *Flynn*, (CA 2) 216 F. 2d 354, certiorari denied, 348 U. S. 909. Additionally, Andrew Onda, Betty Gannett and Joseph Roberts were alleged as co-conspirators.

[3] Count (2) of the indictment charging the appellants with organizing of the Communist Party was removed from the consideration of the jury by the trial judge (Tr. 8920).

Party to be organized, and would recruit and encourage recruitment of members of said Communist Party concentrating on recruiting persons in key industries and plants; (3) that they would publish, circulate and cause to be published and circulated books, articles, magazines and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence; (4) that they would write and cause to be written articles and directives in Communist Party publications, including "Political Affairs," "Daily Worker" and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government by force and violence; (5) that they would conduct and cause to be conducted schools and classes for indoctrination of recruits and Party members in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government by force and violence as speedily as circumstances would permit; (6) that they would agree upon and carry into effect detailed plans for the vital parts of the Communist Party to go underground, in the event of emergency, and from such underground position to continue the conspiracy charged; (7) that they would use false names and documents in order to conceal their identities and activities as members and functionaries of the Party; (8) that they would do other and further things to conceal the existence and operations of the conspiracy.

The indictment alleged seventeen overt acts as having been committed by appellants and co-conspirators in pursuance and to effect the objects of the conspiracy.[4]

[4] Originally appellants with the exception of the appellant Stone were indicted on June 4, 1954, under an indictment which was substantially identical with the present indictment. The trial judge dismissed the original indictment on February 23, 1955, on the ground that the grand jury had been improperly impanelled.

Questions Presented

1. Whether the portions of the Smith Act invoked by the indictment in this case, as construed and applied herein, violate the First Amendment, the Fifth Amendment, and other provisions of the Bill of Rights.

2. Whether the conspiracy provisions invoked by the indictment in this case, as construed and applied herein, violate the First Amendment, the Fifth Amendment and other provisions of the Bill of Rights.

3. Whether as to each appellant the evidence was sufficient to sustain the verdict.

4. If there was a conspiracy to engage in illegal advocacy which commenced in 1945, whether that conspiracy continued into the three-year period prior to the indictment, March 1952 to March 1955.

5. Whether there was valid proof of any overt act.

6. Whether appellants' utterances created a clear and present danger of a serious substantive evil.

7. Whether the trial court erred in admitting prejudicial prosecution evidence.

8. Whether Rule 23(a) of the Federal Rules of Criminal Procedure confers upon the Government the absolute right to require that a defendant in a criminal case be tried by a jury.

9. Whether, as construed and applied herein, Rule 23(a) of the Federal Rules of Criminal Procedure violates the Fifth and Sixth Amendments.

10. Whether the Congressional "findings" in the Communist Control Act of 1954 (50 U. S. C. 841) operate as a bill of attainder or deprive appellants of a fair and impartial trial.

The Trial

The trial commenced on October 14, 1955. After ten full court days of inquiry on the voir dire, the jury was impaneled on November 3, 1955. The verdicts of the jury were returned on March 29, 1956, sentences were imposed on April 20, 1956, and within the prescribed period appellants filed Notices of Appeal.

The Government presented its case through witnesses who were:

1) Former members of the Communist Party who had broken with it and testified as experts on Marxism-Leninism, and generally on the aims, purposes and activities of the Communist Party;

2) Former members of the Communist Party who had broken with it and who testified concerning specific Communist Party activities on the part of individual appellants and their co-conspirators;

3) Persons who had joined the Communist Party for the purpose of reporting to the FBI on the activities of the Communist Party, and

4) Persons who had never been members of the Communist Party who testified concerning the use of aliases or conduct of some of the appellants and their co-conspirators as representatives and officers of the Communist Party.

The Government's evidence consisted of oral testimony which was in large measure corroborated by documentary evidence, the authenticity of which is not disputed. Of the appellants, only Robert Ekins testified. During the course of his testimony, Ekins was cited for contempt of court for refusing to answer questions put to him on cross-examination concerning the identity of a third party as a member of the Communist Party. Subsequently, Ekins was given several opportunities to purge himself of the contempt, but declined to do so.

Statement of Facts

A. Communist Party U. S. A.

The Communist Party, U. S. A.,[5] was first formed in the year 1919 and "has since its formation been building upon the basis of principles worked out by the great Lenin." It has continually based itself upon the so-called theory of scientific socialism—Marxism-Leninism (Def. Ex. V).

Marxism-Leninism is basically the writings and teachings of Marx, Engels, Lenin and Stalin, which comprise the so-called "classics" of the Marxist-Leninist doctrine, and their application in this era, the era of monopoly capitalism and imperialism, the era of proletarian revolution in general, the era of the dictatorship of the proletariat (Tr. 3435).[6]

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[5] For the sake of brevity, the Communist Party, U. S. A., will also be referred to hereinafter as the C. P. or C. P. U. S. A.

[6] "Tr." refers to Reporter's Typewritten Transcript of Record. "App. Br." refers to Appellant's Brief. "Gov't. Ex." refers to Government Exhibit. "Def. Ex." refers to Defense Exhibit.

In the Marxist "classics" including "Communist Manifesto" by Marx and Engels (Gov't Ex. 11), "State and Revolution" by Lenin (Gov't Ex. 6), "Problems of Leninism" by Stalin (Gov't Ex. 5), "Foundations of Leninism" by Stalin (Gov't Ex. 4), "History of the Communist Party of the Soviet Union (Bolshevik)" (Gov't Ex. 12), the call for the overthrow and destruction of all capitalistic governments in the world by force and violent revolution is unequivocal (Gov't Ex. 4, p. 56, re applicability to the United States).

B. Dissolution of the Communist Party and Establishment of Communist Political Association.

In 1943, during World War II, a meeting of the leaders of the three Great Powers, the United States, Great Britain and Russia, took place at Teheran. Shortly after this meeting Earl Browder, the General Secretary of the Communist Party, U. S. A., proposed that to carry out the decisions of the "Big Three" at Teheran, the Communist Party of the United States should be dissolved and a political association formed. This new organization, known as the Communist Political Association,[7] was formed in May 1944 and replaced the Communist Party for a period of approximately fourteen months until July 1945 when it was dissolved. The C. P. A. functioned under the leadership of Earl Browder nationally, and in the state of Connecticut under Andrew Onda, President of the Communist Political Association of Connecticut, and a named co-conspirator herein.

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[7] The Communist Political Association will be referred to as the C. P. A. hereafter.

It is significant that William Z. Foster, the present chairman of the Communist Party and a co-conspirator herein, wrote a letter to the members of the National Committee, C. P. A., U. S. A., dated January 20, 1944, in which he opposed the dissolving of the old Communist Party and the founding of the Political Association. This letter was not made known to the general membership of the party and was in fact suppressed at the time of its presentation to the National Committee (Gov't. Ex. 21).

C. The Reconstitution of the Communist Party.

On May 24, 1945 there appeared in the "Daily Worker," the official organ of the Communist Party (Tr. 2901), a translation of an article by Jacques Duclos, general secretary of the French Communist Party. This article was subsequently published in the July 1945 issue of "Political Affairs," the theoretical organ of the Party, as well as in the pamphlet "On the Struggle Against Revisionism" (Gov't. Ex. 21).[8]

The Duclos article condemned the Browder program of class peace exemplified by the C. P. A. as "notorious revisionism" which violated the most fundamental principles of Marxism-Leninism. It analyzed Browder's 1944 report to the National Board which recommended

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[8] This court has reviewed the circumstances pertaining to the reconstitution of the C. P. U. S. A. in *United States* v. *Dennis*, 183 F. 2d 201, affirmed at 341 U. S. 494 and in *United States* v. *Flynn*, 216 F. 2d 354, certiorari denied, 348 U. S. 909. In this brief our discussion of the reconstitution will be only to the extent necessary to establish the background for the evidence which shows its implementation in Connecticut by these appellants and their co-conspirators.

disolution of the Communist Party and the formation of the new Communist Political Association, as well as other statements and speeches made by him in connection with the alleged objectives of the C. P. A. It also dealt in detail with Foster's suppressed letter.

On June 2, 1945, the National Board of the C. P. A., which included named co-conspirators Foster, Dennis, Williamson, Davis, Green and Thompson, adopted a Draft Resolution (Gov't. Ex. 2) criticizing the Browder period as a revision of basic Marxist-Leninist theories. This resolution spoke of "the basic correctness of the sound fraternal, Marxian opinion expressed in the recent article of Jacques Duclos, one of the foremost leaders of the Communist Party of France" (Gov't. Ex. 2).

Prior to the National Convention of the Communist Political Association which was called in July, 1945 to consider the proposals set out in the Duclos article, numerous meetings of the Association were held in Connecticut, at which the Duclos article was discussed (Tr. 1593-4). For example, in June, 1945, there was an organizational-educational meeting of the C. P. A. held in Bridgeport (Tr. 4452-3). At this meeting co-conspirator Andrew Onda, President of the C. P. A. of Connecticut, spoke on the Duclos article and stated that Duclos was absolutely right in his criticism of the American Communist Political Association and that "we must return to Marxism-Leninism." He further stated that Socialism would not be "handed to us on a platter," and urged also that the local clubs study the National Board Resolution (Gov't. Ex. 2) which had been written by the leaders in New York (Tr. 4455).

Again in June, 1945, a mass Political Affairs (Associa-

tion) meeting was held in New Haven, Connecticut (Tr. 4457). The witness Worden C. Mosher[9] testified that Onda again spoke on the Duclos article and the National Board Resolution. In the course of his remarks he accused Browder of revising Marxism-Leninism inasmuch as the C. P. A. policy contained no revolution and the Communists were no longer the vanguard of the working class. Revolution, according to Onda, meant sudden and violent death and the seizure of the Government overnight (Tr. 4459-60). Onda also urged those present to read the "History of the Communist Party of the Soviet Union" (Gov't. Ex. 12) (Tr. 6395-6). Saul Kreas, later a member of the State Committee of the Communist Party of Connecticut (Tr. 4458) rose in support of Onda's position and stated in essence that his (Kreas') attitude of violence and revolution had been the correct one; that Communists had gotten further when they met in cellars and called each other "comrade" and that the C. P. A. had made the real revolutionaries "sick to their stomachs" (Tr. 4461).

During July, 1945, a meeting of the C. P. A. was held at IWO Hall in Bridgeport for the purpose of discussing the National Board Resolution. At this meeting Onda gave the position of the National Committee with regard to the National Board Resolution (Tr. 1525-31), and reported that the State Committee of the C. P. A. had gone on record as endorsing the Resolution (Tr. 1587). Onda also stated that the Party had gone through a period of "re-

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[9] Worden C. Mosher joined the Communist Party in 1939 under the name Mike Spencer in order to report its activities to the F. B. I. He held the position of Financial Secretary of the New Haven Section of the Communist Party during the late 1940's (Tr. 4529). He remained a member of the Communist Party until the summer of 1950 when his status as an undercover agent for the F. B. I. became known to the Party leaders, whereupon he was expelled (Tr. 4774-4776).

visionism as to the Marxist-Leninist theories" and that the Communist Party should not have been dissolved, and that a long range policy of collaboration with the capitalistic system is impossible (Tr. 1587-8). This meeting preceded the State Convention of the C. P. A. which was held at the Moose Hall in Bridgeport in the latter part of July 1945 (Tr. 4461, 6398). Approximately one hundred persons including the appellant Goldring attended this convention (Tr. 4462, 6398). Onda again spoke reiterating his position in support of the National Board Resolution and advocating return to the old Communist Party based on Marxism-Leninism. He urged the establishment of Marxist-Leninist classes and other measures to put the Party program into practice (Tr. 4463, 6399). One of the delegates stated that a "peaceful transition to socialism was impossible," and that it was a direct mistake to change the name of the Communist Party to that of the Communist Political Association (Tr. 6400).

Prior to the closing of this convention, resolutions were passed to accept the National Board Resolution, to give the Communist press more attention, and to set up Marxist-Leninist classes throughout the state of Connecticut (Tr. 4464). Andrew Onda was elected to represent the C. P. A. of Connecticut at the National Convention which was to be held July 26-28, 1945 in New York City (Tr. 6408).

In order to review the events which transpired in connection with the National Convention which reconstituted the Communist Party, U. S. A., we turn to the testimony of witness John Lautner a high-ranking Party functionary,[10] who attended that convention.

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[10] Lautner was District Organizer in West Virginia from 1936 to 1940 (Tr. 2350); he had attended the National Training School of the Party in 1930 (Tr. 2362), and 1941 (Tr. 2350); he was a member of the National Review Commission in 1948 and was head of the New York State Review Commission from 1947 to 1950 (Tr. 2351).

Lautner testified that he returned to New York in June, 1945, after the completion of his military service, and went to the National Headquarters of the C. P. A. There he reported to co-conspirator John Williamson, who was at that time, National Secretary of the C. P. A. Williamson urged Lautner to study all the documents relative to the issues at that time, specifically the Duclos article, the Draft Resolution, Foster's suppressed letter and the pre-convention articles appearing in the "Daily Worker" and "The Worker". He was further urged to acquaint himself with all the issues arising out of the Duclos article and was also invited to attend both the State and National Conventions of the Communist Political Association (Tr. 2394-95). Lautner followed these instructions by making a study of the material in the Daily Worker files the substance of which is to be found in Government Exhibit 21.

Prior to the National Convention Lautner had discussions with many of the National Leaders, among whom were co-conspirators Eugene Dennis, Jack Stachel, Bob Thompson and Elizabeth Gurley Flynn[11] concerning the events which had transpired during the time he was in the army (Tr. 2907).

In the latter part of July, 1945, the emergency National Convention of the Communist Political Association was called in New York City (Tr. 2917) to undo the mistakes of the C. P. A. period. About one hundred persons at-

[11] The witness recalled in particular several discussions with Elizabeth Gurley Flynn, in which she criticized the behavior of some of the Party leaders in face of the grave charges leveled against Browder, "and the flip-flop some of these leaders (particularly Dennis and Williamson) made to jump on a different bandwagon," and their lack of self-criticism as to their own role under Browder's leadership (Tr. 2907-14).

tended this convention which was closed to the public and the press (Tr. 2917).[12] Co-conspirator Potash presided as the permanent chairman (Tr. 2934).

The delegates to the convention unanimously adopted the draft resolution (Tr. 2939) and unanimously voted to reconstitute the Communist Party with co-conspirator Foster as its head (Gov't. Ex. 21). Among those elected to the National Committee and in some cases to the National Board of the reconstituted Communist Party were the co-conspirators, Foster, Dennis, Williamson, Stachel, Thompson, Davis, Winston, Green, Winter, Hall and Flynn (Gov't. Ex. 21).

The convention adopted a constitution which dedicated the party "to the principles of scientific socialism, Marxism-Leninism" (Tr. 2933). During the report of co-conspirator John Williamson concerning the proposed new constitution, questions were asked from the floor with regard to the preamble (Gov't. Ex. 21, p. 84; Tr. 2931-32). Specifically a question was asked as to where in the preamble the "dictatorship of the proletariat" was to be found. Co-conspirator Dennis answered this question by stating "It is there. Even the blind can see it" (Tr. 2931-32).

Reports were also made to the convention by William Z. Foster, John Williamson, "Pop" Mindel and others (Tr. 2919).

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[12] The witness' duties in connection with the convention included membership on the Veterans Commission and on "one other Commission", and in addition he was assigned to work with J. Peters who was in charge of security at the convention. Witness' specific duty was to keep unauthorized persons from the secretarial room where all documents were typed, edited, etc. (Tr. 2918).

Co-conspirator Foster, in his report accused Browder of deviating from the Marxian concept of economy; of giving up the vanguard role; of denying the imperialist monopoly nature of capitalism and; of not understanding it. He also blamed Browder for the dissolution of the Communist Party and dealt with the effect that this revisionist leadership had on the Communist movement elsewhere. He called upon the Party membership to restudy the basic principles of Marxism-Leninism, to put forth vigorous efforts to eradicate all vestiges of opportunism and revisionism, and to go back and rebuild the Communist Party U. S. A. (Gov't. Ex. 21, pp. 50, 56, 57, 58, 61, 96, 99; Tr. 2926). Although Browder was present during the course of Foster's report no one rose in his defense as he sat dejected and crying (Tr. 2926).

The substance of the reports made by the co-conspirator Williamson were reported in the pamphlet "On the Struggle Against Revisionism" (Gov't. Ex. 21).

Pop Mindel's report in substance was his own self-critical evaluation as to how, even he, a Marxist-Leninist "scholar" and "theoretician" could be duped by Browder's revisionist policies (Tr. 2932).

The reconstitution of the Party was not merely an isolated phenomenon confined to the National level of the Communist Party. In keeping with the Marxist-Leninist principles of democratic centralism,[13] the various state and district organizations of the Communist Party reconstituted themselves. Andrew Onda returned to Connecticut and attended a membership meeting of the C. P. A. which was held in August, 1945, at Bridgeport, Connecticut (Tr. 6409). He spoke on the National Con-

[13] Discussed in detail *infra* at pages 23-25.

vention stating that it had been agreed there that the main problem was to struggle against Browder's revisionism, to dissolve the C. P. A. and reconstitute the C. P. U. S. A. He urged those present to initiate classes based on the Marxist-Leninist classics (Tr. 6436).

Later in August, 1945, the C. P. A. of Connecticut held a convention at Bridgeport, Connecticut. The main report at this convention dealt with the results of the National Convention and was given by Onda. The report was voted upon and accepted by the State Convention. It was at this convention that the Communist Political Association was dissolved and the Communist Party of Connecticut reconstituted as a Marxist-Leninist Party in conformity with the policy established at the National Convention. The State Convention elected a State Committee[14] and voted to initiate Marxist-Leninist classes in order to counteract Browder's revisionism (Tr. 1598-1612, 4474-75, 6437). Onda also stated that the leaders of the Communist Party who went into the service would retain the same positions upon their return (Tr. 6437).

Subsequent to the Reconstitution Convention in Bridgeport the State Committee began meeting regularly for the purpose of implementing the decisions reached at the State Convention in accordance with the decisions of the national leadership of the Communist Party.

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[14] Those elected included Ronald Marvin Gay, Pearl Russo, Frank Fazekas, Josephine Willard, Neil McGillicuddy, Rose McGillicuddy, Moselle Edwards, Rudy Gillespie, Roy Lieb, Claire Arbiteman, John Holton, Nick Tomassetti, Bill Johnson and Al Harriss (Tr. 1612-14). In addition to those elected at the 1945 convention, Mike Russo and Joseph Roberts became members of the State Committee early in 1946 (Tr. 1619). Appellants Taylor and Goldring became members of the State Committee between 1945 and 1947 (Tr. 1616-1618).

The first State Committee-meeting attended by the witness Gay,[15] was held in August, 1945, at Party Headquarters on Main Street in front of Moose Hall in Bridgeport (Tr. 1619-1620). At this meeting the witness, along with Onda, Neil McGillicuddy, Claire Arbiteman, Roy Lieb, John Holton and Nick Tomassetti, was elected to membership on the State Board (Tr. 1620).[16]

During late 1945 and early 1946, the National Office sent communications outlining methods for study of Marxist-Leninist theory (Tr. 1622), included among these was an "Outline on the Fundamentals of Marxism" (Gov't. Exs. 3 and 3A; Tr. 1663). Discussions were instituted concerning the necessity for keeping the members fully informed on Marxist-Leninist theory and for pushing the sale of Marxist-Leninist literature, which was available to the membership at all branch meetings in Bridgeport as well as at Party headquarters (Tr. 1666-68).[17]

All of the named co-conspirators with the exception of Betty Gannett, Andrew Onda and Joseph Roberts became

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[15] Ronald M. Gay was a member of Communist Party from 1943 until 1948 (Tr. 1524). He was a member of the State Committee of the C. P. of Connecticut from 1945 until 1947 (Tr. 1650); Chairman of the State Youth Commission from August 1945 until 1947 (Tr. 1628) and; State President of the American Youth for Democracy (AYD) in 1945 and 1946 (Tr. 1656).

[16] Subsequently appellant Taylor, Roberts and Russo became members of the State Board (Tr. 1622).

[17] Among the publications purchased and used in connection with this educational program were the following: "Foundations of Leninism," "Problems of Leninism," "State and Revolution," "Imperialism," "What Is To Be Done," "Left Wing Communism," and "History of the Communist Party of the Soviet Union (Bolshevik)" (Gov't. Exs. 4, 5, 6, 7, 8, 9, 12), which were, for the most part, editions of the Little Lenin Library Series (Tr. 1679-80).

members of the National Board and/or National Committee of the Communist Party, U. S. A. at the time of its reconstitution. Betty Gannett later became Organizational Secretary of the Party (Tr. 2119). Joseph Roberts, in addition to being District Organizer in Connecticut, was business manager of the Daily Worker (Tr. 2425-27). Andrew Onda after leaving Connecticut was a Section Organizer in Cleveland, Ohio, and later became National Steel Co-ordinator for the Party (Tr. 2423-25).

In the summer of 1948, another National Convention of the Communist Party was held in New York City (Tr. 3254-55). This convention was held under much the same secretive conditions as was the 1945 convention. The witness Lautner, who was in charge of security at this convention described the elaborate system set up for the identification of the delegates (Tr. 3256-57). No representatives of the American press were admitted to the convention hall, although press representatives of the "Daily Worker" were present (Tr. 3258). The appellants Stone and Ekins were present and all of the District and State organizations of the Communist Party, U. S. A. were represented by delegations (Tr. 3258-7433).

This convention was called for the purpose of making an estimate of the situation prevailing at that particular time (a presidential election year); to work out tactics for the immediate future of the Party based on the recommendations contained in the draft resolution prepared by the National Committee; to review the work of the Party since its reconstitution in 1945 and to elect a National Committee (Tr. 3258-59).

On the recommendation of Eugene Dennis, General Secretary of the Party, the National Committee was

reduced from fifty-five to thirteen persons to avoid giving the Government additional names to prosecute (Tr. 3259-60). The following co-conspirators were elected to the new National Committee: Foster, Dennis, Davis, Gates, Green, Hall, Potash, Stachel, Thompson, Williamson, Winston, Winter and Flynn (Tr. 3260).[18]

Lautner testified that resolutions were discussed and passed at this Convention (Tr. 3262). They were reported in "Political Affairs," for September 1948 (Gov't. Ex. 35) as were the various reports which were made during the course of the Convention.

Dennis, in his report, supported Chairman Foster's position as to the importance of the fullest mastery of Marxist theory and stated as follows:

> "Nineteen hundred and forty-eight, the year of our most severe test, coincides with the 100th anniversary of the Communist Manifesto. Happily, the science of Marxism in which we place our reliance, has itself come through triumphantly in many tests. The twice-told nursery tales of the specter of Communism are being told again, with embellishments. But Communism is no specter. Its solid reality now confronts not only old Europe, but the whole capitalistic world.
>
> History has abundantly confirmed the central theses set forth in the Communist Manifesto, namely, that the struggle of classes is the motive force of history and that '* * * the proletariat * * * must rise to be the leading class of the nation, must constitute itself *the nation*.' And this Marxist teaching has

[18] These persons, with the exception of Elizabeth Gurley Flynn, were members of the old National Board elected at the 1945 Convention (Gov't. Ex. 35).

been enriched and developed further by Lenin and Stalin out of a century of working-class experience.

Lenin wrote that 'the chief thing in the teaching of Marx is the explanation of the world-historical role of the proletariat as the creator of socialist society.' That was in 1913, when it still remained to be proved in practice that a socialist society exists in the Soviet Union. Its creator was the Russian proletariat, led by the Great Bolshevik Party. Now new transitional forms toward socialism are being created by the working class in the people's democracies of Eastern and Central Europe and in the liberated areas of China." (Gov't. Ex. 35, p. 778 et seq.)

An equally pertinent report was that of co-conspirator, Winston (Gov't. Ex. 35, p. 834), wherein he described the results already achieved in the industrial concentration program of the Party (*infra*, p. 31). While pointing out the growth of the Party since 1945 he emphasized that there was much that had to be done towards the full organization of the Party.

Also discussed and approved at the 1948 Convention were plans for a new type youth organization to be set up under the Party leadership. Reports on the proposed organization were made by co-conspirators Betty Gannett and Robert Thompson (Tr. 3264-65). The question of a new youth organization was discussed in a youth panel meeting during the convention, and a report was made to, and approved by, the entire convention. This gave birth to a new Communist youth organization which was to be known as the Labor Youth League (LYL) (Tr. 3265-66). (*Infra*, p. 26).

D. Organizational Structure of Reconstituted Communist Party.

The organizational structure of the Party, including a detailed breakdown of its lowest echelons, is graphically illustrated in the organization chart (Gov't. Ex. 34, Appendix A) introduced and described by the witness Lautner (Tr. 3129). Without detailing this testimony or attempting to fully describe the chart, it showed that the Communist Party, under the direction and control of the National Committee, and National Board, has a comprehensive network of districts, sections and clubs or branches throughout the entire country. The organization is so set up that the State or District organization is responsible to the National Organization, the County or City Organization is responsible to the State or District Organization and the sections are responsible to the County or City Organization. The basic units of the Party are the community clubs, the industrial clubs, and the shop clubs.

In addition, there exists on the national level a number of commissions, such as the Organizational Commission, Labor Commission, Educational Commission, Negro Commission, Review Commission and others. All of these commissions have their counterparts on the state or district level, with the state or district officers varying in number according to the size and importance of the particular state or district.

The duties of the various State and District commissions were analogous to those duties performed by their National counterparts. All of the activities of the commissions and their secretaries were supervised by the organizational commission of the State or District Com-

mittee. Therefore, the responsibility for carrying out Party policy in specific fields such as Youth, Negro, Education and the like, was delegated to specific personnel, who were at all times under the close supervision of the State or District Committee (Tr. 4142-44).

1. Democratic Centralism.

The appellants herein are Party leaders on the District or State rather than the National level.[19] They were the leaders of the conspiracy in Connecticut and it was obligatory upon them, under the principle of democratic centralism, to carry out in their District the decisions emanating from the National leadership. We have seen that such was the case with the reconstitution of the Party and this will be further amplified herein in connection with the discussion of the educational, concentration and security activities of the Party.

The principle of democratic centralism is described in the "History of the Communist Party Soviet Union" (Gov't. Ex. 12) as follows:

> "The Sixth Congress adopted new Party Rules. These rules provided that all Party organizations shall be built on the principle of democratic centralism.
> This means:
>
> (1) That all directing bodies of the Party, from top to bottom, shall be elected;
>
> (2) That Party bodies shall give periodical accounts of their activities to their respective Party organizations;

[19] With the exception of the appellant Stone who was an alternate member of the National Committee of the Communist Party U. S. A. (Tr. 6496; Gov't. Ex. 52) and one of its top leaders particularly in the underground apparatus. (Tr. 5267; 5280).

(3) That there shall be strict Party discipline and the subordination of the minority to the majority;

(4) That all decisions of higher bodies shall be absolutely binding on lower bodies and on all Party members." (Gov't. Ex. 12, p. 198.)

That this is not an archaic principle of the Bolshevik Communist Party but governs the activities of the American Communist Party nationally and locally is apparent from the record. In his report to the emergency National Convention in 1945 co-conspirator Williamson, while discussing democratic centralism, said:

"But once decisions are made in the higher committees, these decisions become the line of activity for the membership as a whole." (Gov't. Ex. 21, p. 79.)[20]

The witness Lautner explained democratic centralism and its application to the Communist Party as follows:

"All decisions made by the National Convention and mandated to the National Committee between conventions are obligatory—were obligatory on all members in the Communist Party in the United States. Even if one did not agree with some of the decisions made on higher levels, nevertheless, they were to carry it out because that was the only way a disciplined party could function where there was unity of will to act as one when the higher body, the National Committee, made a decision in relation to any line of activity in the Communist Party." (Tr. 3151).

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[20] Other references to the principle of democratic centralism and Party discipline may be found in the following: "Outline on Fundamentals of Marxism" (Gov't. Ex. 3, p. 31), and "Program of the Communist International" (Gov't. Ex. 14, pp. 87, 88).

The application of democratic centralism locally was dramatically illustrated at a meeting of the Hill Branch of the New Haven C. P. in November, 1949, when Michael A. Russo (who was then State Chairman of the Communist Party of Connecticut [Tr. 4629]), recommended Alfred Marder for chairman of the New Haven Section Committee. One party member voiced an objection to this procedure whereupon Russo sprang up and stated that regardless of the vote Marder would be put in office. He stated further that even if all voted against his (Russo's) recommendation, the action would still carry (Tr. 4631-37).

Also worthy of note in this connection is the testimony of the witness Pires,[21] who was instructed by his superiors in the Party to concentrate his activities in the Niles-Bement-Pond plant. The witness was informed that these orders had been received from Sid Taylor himself and the witness had "to carry them out" (Tr. 6303).

2. Recruiting and Education of Youth for the Communist Party.

One of the principal concentration efforts by the Communist Party has been directed toward the recruiting of youth into the Communist movement. To accomplish this objective the Party has organized, sponsored and controlled youth organizations under various names which have, in fact, functioned as the youth arm of the Party itself.[22]

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[21] Antonio J. Pires joined the Communist Party in 1952 for the purpose of reporting its activities to the Federal Bureau of Investigation (Tr. 6172, 6324).

[22] In this category was the Young Communist League during the thirties (Tr. 3269-70), which was succeeded by the American Youth for Democracy, a broader based Marxist-youth organization (Tr. 3272), which in turn was succeeded by the Labor Youth League in 1949 (Tr. 3273).

The witness Lautner, while outlining the organizational structure of the Party, pointed out that among the permanent commissions on the national level was the Youth Commission (Gov't. Ex. 34-A, Tr. 3147). He also stated that each State or District level had, as a part of its organizational structure, a Youth Commission (Gov't. Ex. 34-A, Tr. 3143).

During the years 1947 and 1948 the witness Lautner, who was intimately associated with the work of the Youth Commission of the New York Party, attended numerous meetings at which discussions were held with regard to the youth program of the Party (Tr. 3279). At these meetings leaders of the National and New York Youth Commissions gave reports to the State Organizational Commission concerning the formulation of policies for the organization of a new youth group (Tr. 3280-81). These discussions and plans were in accordance with the proposals which had been adopted by the 1948 National Convention of the Communist Party (Tr. 3264).

In early 1949 Leon Wofsy, National Youth Director of the Communist Party (Tr. 3281), and Lou Diskin, New York State Youth Director (Tr. 3281-82), actively participated in youth discussions. As a result, the Labor Youth League, a youth organization directed and organized by members of the Communist Party, was founded in Chicago in 1949 (Tr. 3282). All of the persons receiving assignments to organize the LYL and all those who actually participated in its organization were Party members (Tr. 3284). After the founding convention in Chicago, Lou Diskin gave reports to the New York State Organizational Commission concerning the organization of the Labor Youth League (Tr. 3280-81).

The implementation of the National Communist Party policy with respect to youth organizations in Connecticut closely conformed with the program on the national level. The appellant Taylor, presently State Chairman of the Communist Party of the State of Connecticut, was the State Youth Organizer for the Young Communist League in Connecticut in 1941, and in August of that year recruited the witness Rowena Paumi[23] into the Young Communist League (Tr. 6351-52). In addition to Taylor, the witness also identified the appellant Goldring as having been active in the Young Communist League in 1941 (Tr. 6348).

The interrelation between the Young Communist League and the Communist Party is made manifest by the fact that in inviting the witness Paumi to attend a Young Communist League school in 1941, Taylor advised her that the Communist Party had selected her so that she could become a better leader of the Communist Party in the future (Tr. 6352-53). At these classes the teacher was Joe Clark, a representative of the National Office of the Young Communist League (Tr. 6358). It is significant that the teacher originally scheduled to instruct the students together with Clark was George Siskind. Siskind was a teacher at the 1938 and 1941 National Training School of the Communist Party (Tr. 2092, 2607), and was assigned by the National Committee of the Party in 1938 to head the National Training School

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[23] Rowena Rosemary Paumi joined the Communist Party in August, 1941, after a period of membership in the Young Communist League (YCL) (Tr. 6348). She became inactive early in 1942 (Tr. 5543). At the suggestion of the F. B. I., she was reinstated in the Communist Party during 1943, remaining active until the fall of 1945. She was inactive until 1948 at which time she began once again to report on Communist Party activities to the F. B. I. (Tr. 6438). She remained a Communist Party member until she testified in the present case (Tr. 6348).

(Tr. 2092). This same Siskind also taught educational classes of the Communist Party in Bridgeport in 1941 (Tr. 6370), and was the principal instructor at the nine-day school of the Communist Party of the State of Connecticut which was held in the summer of 1947 (Tr. 5543).

The Communist Party's domination of the youth organizations is also made clear by the post-reconstitution activities of the American Youth for Democracy in the State of Connecticut. The witness Gay, who was chairman of the State Youth Commission of the Party from August, 1945 until sometime in 1947, described the Commission's function. He said that they accepted and fully carried out the programs outlined by the State Convention with respect to youth (Tr. 1628).

Shortly after the 1945 reconstitution convention in Connecticut, the Youth Commission discussed whether the American Youth for Democracy should be reactivated to carry out the Party's program with regard to youth or whether it would best be carried out by an organization along strictly Communist lines (Tr. 1649). The Youth Commission decided that the aims of the convention could best be fulfilled by an organization of strictly young Communists, and this decision was personally presented to the State Committee of the Communist Party, by the witness Gay (Tr. 1651-52).

After discussions by the State Committee in late 1945, the matter was referred to the National Office of the Communist Party for decision. Carl Ross, a National Official of the AYD was sent to Connecticut to discuss the matter with the Youth Commission members (Tr. 1653-54). At this discussion, Ross identified himself as having been sent from the National Committee of the

Communist Party (Tr. 1654-55). The Commission made known its position to Ross, who stated that such position did not conform to the national policy of the Party and that the National Party wanted the AYD continued as the best means of broadening the base of the Party among the youth of the country (Tr. 1654). As a result of these discussions the Youth Commission agreed to accept the program of the National organization and activate the AYD (Tr. 1655). The witness Gay, who was then head of the State Youth Commission, became chairman of the newly activated AYD organization in Connecticut (Tr. 1656).

In reviving the AYD Gay testified that he received assistance from Party members who gave him a large number of names of young people who might be interested in joining the youth organization (Tr. 1657). In this connection the appellant Taylor told Gay that Al Marder, who had previously worked in the youth movement, was getting out of the Army soon and he would help reestablish the New Haven American Youth for Democracy Club (Tr. 1658).

A graphic illustration of the close relationship between the Labor Youth League and the Communist Party in the State of Connecticut is given by the testimony of the witness Harold Mosher[24] concerning two meetings of the League in August 1950. At the first of these meetings, it was stated by Sidney Resnick that the Communist Party and the Labor Youth League would continue to function even though they were outlawed (Tr. 5699-5700). At the second August meeting, Resnick discussed the LYL

[24] Harold W. Mosher joined the Communist Party in 1947, for the purpose of reporting its activities to the Federal Bureau of Investigation. He remained an active member of the Party until August 1950, during which time he held various offices in the Youth Branch of the C. P. of New Haven (Tr. 5474-5480).

going underground and the various security measures that should be adopted (Tr. 5702). He also discussed the Mundt-Nixon bill and how the Party members should react in the event that they were contacted by the FBI with respect to registering under this legislation (Tr. 5702).

It is also worthy of note that many of the principal leaders of the Communist Party are persons who have served in the youth arms of the Party. Among these are the co-conspirators John Williamson, Robert Thompson, Henry Winston and Gil Green (Gov't. Ex. 52; Tr. 2406, 2411, 2413, 2415), all members of the National Committee.

Noteworthy, also, is the fact that in June, 1950, Resnick had a conversation at the Labor Youth League headquarters with one Lou Diskin, who was identified as a representative of the National Office of the LYL (Tr. 5696). This is the same Lou Diskin who, according to the witness Lautner, reported to the Organizational Commission of the Communist Party of the State of New York with reference to the efforts of Party members to organize the LYL in Chicago in 1949 (Tr. 3280-3281). During this conversation, Diskin made statements with reference to the readiness of the Communist Party all over the world to revolt in the event of a third world war with Russia, to which Resnick expressed his agreement (Tr. 5698).

Thus the importance given to the regimentation of youth by the Communist Party has been clearly demonstrated. The youth leaders are obviously handpicked, not only on the basis of their Marxist-Leninist understanding and their dedication to the Communist Party, but for their organizational ability as well. And in addition, it is established that the youth question in Connecticut has received the closest of supervision, not only from the local

Party leadership but from the national leadership of the Communist Party as well.

3. Policy of Concentration in Basic Industries.

One of the principal objectives of the 1945 National Convention was the reinstitution of the industrial concentration policy of the Communist Party. The need for recruiting Communist Party members in the key basic industries was emphasized in a report by John Williamson to the Convention:

> "To influence successfully the political life of the nation, the center of gravity of the Communist organization should be in the main cities and especially in the centers of large industry. This means our strongest roots must be among the industrial workers—particularly in the steel, auto, coal, marine, electrical equipment, shipbuilding, and metal industries." (Govt. Ex. 21, page 74)

The industrial concentration program was also part of the platform of the 1948 National Convention as evidenced by Henry Winston's report (Govt. Ex. 35) which in turn was an important source material for a National outline entitled "Study Course on the Communist Party, The Working Class and Industrial Concentration, Issued by National Education Department, Communist Party" (Govt. Ex. 28). This outline widely distributed was identified as having been disseminated in New York (Tr. 3108) as well as in Connecticut (Tr. 4609, 5709). Source material for this outline was "The Communist Manifesto", "Foundations of Leninism", "What is to be Done", "History of the Communist Party of the Soviet Union", all of which were exhibits in the case, as well as articles by such national leaders of the Communist

Party as co-conspirators Foster, Williamson and Fine. These articles appeared in the various editions of the "Political Affairs" magazine ("a magazine devoted to the theory and practice of Marxism-Leninism" Gov't Ex. 35).

The outline (Gov't Ex. 28) describes the "Communist fight for the attainment of the immediate aims, for the enforcement of the momentary interests of the working class; but, in the movement of the present, they also represent and take care of the future of the movement (Communist Manifesto)" (page 8). The Party is to perform its vanguard role by basing "all its policies and actions on firm foundation of Marxism-Leninism" (page 9). Thus the Communist Party, in the words of Stalin appearing in "Foundations of Leninism", "is the General Staff of the proletariat" (Gov't Ex. 4, Chapter VIII, page 110). "But it does not by any means follow from this that the Party can be regarded as an end in itself, as a self-sufficient force. The Party is not only the highest form of class association of the proletarians; it is at the same time an instrument in the hands of the proletariat for achieving the dictatorship where it has not yet been achieved and for consolidating and expanding the dictatorship where it has already been achieved." (Gov't Ex. 4, page 117).

The obvious purpose behind the Party concentration in key basic industries, therefore, is to facilitate the overthrow of the Government of the United States by being in position to paralyze the Nation's economy at the propitious moment. As co-conspirator Winston pointed out in his report:

> "While we must strengthen the Party in all basic industries, we must particularly select for major concentration such industries as steel, auto, mining, mari-

time, electrical and railroad. Within these industries we must pursue a policy of concentration—with special consideration for the most underpaid sections of the workers, the unskilled and semi-skilled. In some districts, additional industries may be selected, as for instance, textile in the South, and New England; in Ohio, rubber in addition to steel and mining, etc." (Gov't Ex. 35, page 840)

During the period of late 1945 through 1947, the State Committee discussed the methods of industrial concentration (Tr. 1687-88). The appellant, Taylor, participated in these discussions which were usually based on communications from the National office of the Communist Party emphasizing the necessity of organizing workers in the basic industries (Tr. 1688-89).[25] The State Committee also urged the breaking down of the Party branches along industrial lines such as the club at General Electric in Bridgeport (Tr. 1690-1691). Internal union affairs were discussed in Party caucuses at which non-union Party members were present and in which the best means of "pushing" the interests of the Communist Party in the union were worked out (Tr. 1699-1700). In addition, discussions were had as to the means of getting Communists in positions of officership in the union and recruiting other workers for the purpose of carrying out the Communist Party program (Tr. 1722).

The modus operandi of the Party and of the appellants with regard to industrial concentration was graphically

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[25] In 1953, the appellant Stone not only instructed the Communist Party leadership in Connecticut to infiltrate secret Party members in the basic industries but emphasized the importance of getting them into such key departments as the maintenance shops and the power house at the General Electric plant at Bridgeport, Connecticut (Tr. 5120-5124).

described by the witness Gay in response to a question on cross-examination. He explained that:

"In order to understand the reason how a Communist can control or sway the opinions of the policies of a union, you must understand that each of the Communist Party members concentrate on a specific group of people within his particular area constantly feeding them the type of information which would tend to make these people support their policies.

The Communists themselves are tremendously active in the union, it is in support of the people's everyday working problems. This support, this activity and support of these people's everyday requirements almost in all cases tend to make these people become supporters of these people as individuals. When they have accumulated a set of from five to ten to fifteen people who believe in them as individuals, and have been able to convince them of—convince them that their internal union policies are correct and that they are fighting for the position of the people, they are in many cases able to persuade them to come to the union election, the union meetings, and at the union meetings with a relatively small number of members present it requires a very small percentage of the actual membership to put over as an official position of the union the specific policies that the Communist Party wants to put over.

Normally, I would say that there would be from, varying between one hundred to two hundred members at the normal membership meeting, that the thirty-five members of the Communist Party were each able to bring from three to ten people to this membership meeting with a fairly limited amount of discussion on the floor and they were very often able

to succeed in putting over the program that they happened to be wanting to put over at the time.

During the course of union elections, these same people, Communist Party members who at General Electric were scattered from one end of the company to the other, concentrated on going to these same people, indicating to them the amount of work that they had done in their behalf during the past year, and convincing them that other people whom these people might not necessarily know, were interested, and were going to work in their behalf as well as they had.

On election days, every Communist Party member was assigned the responsibility of seeing that those people voted in the election, received a card with the slate outlined on it that this particular Communist wanted the member to vote for, and, before work was over, we always made sure that every person that we thought would support our slate of candidates voted in that election" (Tr. 1885-87).

Thus the industrial concentration program was directed toward the infiltration of trusted Party members into key positions in key unions and industries. Additionally, the testimony of the witnesses Kent and Pires specifically points out the continued emphasis on the industrial concentration program by these appellants during the indictment period (Tr. 5120-5124; 5153; 5225; 6239, 6240-41, 6305).

4. Clandestine Nature of the Party and the Party's Underground Apparatus.

Lenin pointed out that "during the period of reaction they should learn how to retreat properly, how to go

underground, how to preserve and strengthen the illegal party, how to make use of legal opportunities of all legally existing organizations, especially mass organizations, in order to strengthen their connections with the masses" (Gov't Ex. 12, p. 132).

In line with the above quoted instructions from Lenin, the co-conspirators and these appellants made plans to place the leadership of the Party underground. These plans were carried out, nationally and locally.

The witness Lautner testified to several conferences he had had with the co-conspirator Robert Thompson in the summer of 1948 concerning the necessity for taking the Party underground (Tr. 3307, 3313). Thompson outlined in general terms security measures to be taken by Party members. Among the measures to be taken by Party members were refraining from telephoning from the Party building, checking on mail going out of the building, establishing an elaborate guard system for Party headquarters and supplying functionaries with copies of the First and Fifth Amendments of the United States Constitution as well as the telephone numbers of attorneys for use in case of arrest (Tr. 3310-11).

At one of the conferences which was held under strict conditions of secrecy, Thompson announced that the meeting was being held to work out plans for going underground so that the Party could function under any and all conditions and insure a continuity of leadership (Tr. 3314-15). Those present discussed a "system of threes" which had been used very successfully in the European countries. Lautner explained in detail how the "threes" system operated. One of the primary laws of this structure is that it is a one-way proposition, with all decisions emanating from the top. A lower level cannot, under any conditions,

get in touch with a higher level of the structure (Tr. 3315-16). It was decided that the "three system" should be built to the fourth level within two months (for complete discussion of the system, see Gov't. Ex. 36(A); Tr. 3319-3337). Thompson pointed out that plans for security as well as for the underground structure had been discussed at a National Committee meeting at which William Z. Foster gave the report (Tr. 3336).

The system was actually put into operation in New York State (Tr. 3337).

Thompson, in his description of the system, pointed out to Lautner that members on the bottom rung of the structure would have only limited contact with other Party members. He explained that these members would only have contact with the other two persons in his group, and their contact person on the next highest level, so that if any member got into trouble, he would not be able to identify more than three other Party members. Those on higher levels would, of course, know an additional member or two since they would be in contact with a unit below as well as one above (Tr. 3323-3325).

That the underground "system of threes" was put into effect within the Communist Party of Connecticut by these appellants is uncontroverted. The witness Pires was assigned to a three-man group at the Niles-Bement-Pond Plant in West Hartford (Tr. 6327). Pires attended meetings with the three-man cell. Their higher contact was Victor Vittoria, Secretary of the Communist Party of Hartford (Tr. 6238-39). After the witness had been in the cell for about six months, he was informed that he, himself, was going to be put in charge of a new three-man cell

(Tr. 6253). The explanation given for the use of the three-man cells in Connecticut was as follows:

> "If the Federal Bureau of Investigation should break in, it would be a cell of only three, there wouldn't be others involved, and it is also for security, for security for the Party to have only three in a cell because if there should be an F. B. I. spy in the organization, he only knows of three in a cell, and it might be another cell across the street, so that he wouldn't know about it" (Tr. 6249).

In addition to the testimony of the witness Pires, the witnesses Kent[26] and Paumi testified to the extensive security measures taken by the Party leaders to conceal their activities (Tr. 5061-61, 5086, 5096, 5121, 5141-46, 5152-57, 5207, 5221, 5256-60, 5262-63, 5268-74, 5276-79, 5297-99, 6458-6460, 6463-6465, 6505-6521).

Not only did these appellants wrap themselves in a veil of secrecy, but they did so with the avowed intention of circumventing the law. The appellant Taylor stated that under the instructions of the National office of the Party he and the other leaders were required to alter their appearances (Tr. 6507). He also stated that the missing National leaders who had jumped bail and were fugitives (from justice) had jumped bail because they believed strongly in the advent of socialism and that they could

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[26] Harold A. Kent originally joined the Communist Party of Connecticut in 1949 (Tr. 5301). In 1952 he reactivated his membership for the purpose of reporting its activities to the Federal Bureau of Investigation (Tr. 5056). He was a member of the City Committee of the Communist Party of Bridgeport; a member of the State Negro Commission; and, became a member of the concealed State Board of the Communist Party of Connecticut in 1954 (Tr. 5062-5063).

not further their activities to that end while in jail (Tr. 6507-09). In referring to the missing leaders in Connecticut, Taylor named, among others, the appellants Ekins and Dimow (Tr. 6519). This testimony is corroborated by the testimony of several witnesses who were net Party members but who identified these appellants and other Party members as having used fictitious identities, and other measures to conceal their whereabouts (Tr. 6090, 6134, 6143, 6147, 6151, 6154, 6157-58).

The clandestine nature of the activities of the appellants and their co-conspirators established the illicit nature of the conspiracy; the fact of appellants' participation in its illicit operations and; the fact that these appellants entered into the conspiracy and carried on their activities with full knowledge that the objectives of the conspiracy were to circumvent the laws of the United States.

E. Advocacy of Forcible Overthrow.

As indicated by the preamble to its constitution, the Communist Party bases itself upon the principles of Marxism-Leninism (Gov't. Ex. 17, p. 3). That appellants and other Party leaders in fact taught and advocated the principles of Marxism-Leninism is uncontradicted.[27]

The resolution adopted at the Emergency National Convention in 1945 (Gov't. Ex. 21) stated that "the correction of our revisionist errors demands the immediate

[27] The appellant Ekins described the Marxist-Leninist classics as the "Horse's Mouth". He stated that all questions which arose as to the interpretation of Party doctrine were resolved by going back to the basic writing of Marx, Engels, Lenin and Stalin (Tr. 7122).

reconstitution of the Communist Party and guaranteeing the re-establishment of the Marxist content of its program, policies and activities" (p. 96). It then provided that the Party "must wage a resolute ideological struggle on the theoretical front, enhancing the Marxist understanding of our entire organization and leadership" (p. 99).

William Z. Foster, in his report to the same Convention, castigated Browder for his "head-on attack upon the whole body of Marxist-Leninist principles" and for his "scorn" for the "Marxist-Leninist books and formulas." He further complained that "Browder would have us throw away the Marxist-Leninist classics" (Gov't. Ex. 21, p. 57). With the decks thus cleared, Foster told the Convention "[a]s never before we must train our Party in the fundamentals of Marxism-Leninism" (Gov't. Ex. 21, p. 61).

Co-conspirator Williamson then took up the cudgel. He reported that a "[p]rerequisite for a Communist Party is the mastery of Marxist-Leninist theory" (Gov't. Ex. 21, p. 72). He warned the membership to "never forget the emphasis of Lenin that 'the role of the vanguard can be fulfilled only by a Party that is guided by an advanced theory' ", and that, "[e]ducational work is not mere study groups established for the sake of study, but is aimed at equipping our members with the knowledge and experience to know how, in the course of all struggles, to adopt the most effective strategy and tactics. . . ." (Gov't. Ex. 21, p. 73).

The report of Max Weiss to the plenary meeting of the National Committee in July, 1946 (Gov't. Ex. 32), is primarily concerned with "The Struggle On The Ideo-

logical Front", as its title indicates. According to Weiss, Marxism-Leninism "guides the Party and the masses in the struggle" (p. 838). He affirmed "the Marxist-Leninist analysis of the United States as an imperialist country . . . the most powerful imperialist country in the world" (p. 841) and decried "the attempt to portray the Soviet Union as an expansionist" (p. 842). He called the latter statement "Hitlerian slander," saying that the "Socialist Soviet Union is by its very nature anti-imperialist" (p. 842). The entire Party, stated Weiss, must be equipped "with the science of Marxism-Leninism" and this "struggle on the ideological front" must be guided by the Party "beginning with the National Committee and National Board, on down through the State Committees, State Boards and Section Committees" (pp. 848, 849). The Party "must organize the training and development of a cadre for educational work," including "a corps of educational directors in the districts, sections and branches" and "specialist—educational directors, press directors, literature agents, teachers . . ." (p. 850).

Weiss then called the attention of the group to the coming centennial of Marxism—100 years since the Communist Manifesto was written (p. 850). This centennial was to be the occasion for action under the slogan: "Bring Marxism-Leninism back to the masses!" (p. 851). He urged the institution of classes in the principles of Marxism (p. 851). As a part of the program he asked the Party to:

> "Organize for mass sale the chief Marxist classics: *The Communist Manifesto; Socialism—Utopian and Scientific; Wage, Labor and Capital; Value, Price and Profit; Lenin's Imperialism; Stalin's Founda-*

tions of Leninism; History of the C. P. S. U." (p. 851).

In the magazine "Political Affairs", for the month of December, 1949, there appears an article by Alexander Bittleman (Gov't. Ex. 38).[28] This particular edition of the magazine, as did all editions of "Political Affairs," received wide distribution throughout the Party generally as well as in Connecticut (Tr. 3354-56, 4645, 4650).

The magazine on its front cover carries the picture of J. Stalin who is characterized as "The Lenin of Today" and who is eulogized on the occassion of his seventieth birthday. This document, as do many of the Government exhibits, establishes the close ideological relationship between the Communist Party of the United States and the motherland of all Communists, the Soviet Union.

Concerning Stalin's writings Bittleman wrote:

> "A theoretical contribution of Stalin, which, like the *Foundation of Leninism* and his other theoretical works, ranks with the fundamental theoretical and philosophical works of Marx, Engels and Lenin, is the *History of the Communist Party of the Soviet Union.* The History is a fountain-head of Marxist-Leninist knowledge, theory, ideology, strategy, tactics, principles of organization. It is a guide to Marxist-Leninist action. It embodies the theoretical and programmatic positions of Marxism-Leninism" (Gov't. Ex. 38, p. 8).

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[28] The author of this article was a member of the Central Committee of the Communist Party in the 1930s (Tr. 2395-2477), an instructor at National Training Schools (Tr. 2167) and a member of the National Committee of the Communist Party after 1945 (Tr. 2945-48).

Bittleman cites several of Stalin's exceptionally fruitful political conclusions, including such as "one must be a revolutionist not a reformist; one must follow and practice the policy of class struggle in all fields, not of class collaboration" (p. 8). He then points out that "Lenin, Stalin created and built the Bolshevik Party, the party of a new type . . . without which the proletariat cannot liberate itself from capitalism," (p. 8) and quotes the following from "History of the Communist Party of the Soviet Union" (Gov't. Ex. 12) which states:

> "The history of the Party teaches us, first of all, that the victory of the dictatorship of the proletariat, is impossible without a revolutionary party of the proletariat, a party free from opportunism, irreconcilable toward compromisers and capitulators, and revolutionary in its attitude toward the bourgeoisie and the state power (p. 353)" (Gov't. Ex. 38, p. 8).

There is no question that the so-called "classics" of Marxism-Leninism have been circulated, studied and taught in the Party generally as well as in the State of Connecticut (Tr. 7507) or that they contain the principles which guide the activities of the Party. This fact is evidenced by the testimony of each Government witness from Gay (Tr. 1668-1670) to Paumi (Tr. 6354, 6858, 6859) with the exception of those witnesses who were not in the Party in Connecticut. There was evidence concerning Marxist educationals in the clubs as well as more formalized classes with specially-trained instructors.

Additionally, there is evidence of the dissemination of the National Outline on the Fundamentals of Marxism (Gov't. Exs. 3, 3-A) within the State (Tr. 1662, 1663, 4970). This is the same outline that was used by the witness Lautner in Party schools in New York City and which was

obtained by him at Communist Party headquarters in New York (Tr. 2670, 2690, 2858, 2865, 3199, 3369, 4106).

There was uncontradicted evidence concerning educational classes conducted by the appellant Dimow (Tr. 4519-21, 4699, 4764) and to the fact that an outline, "Fundamentals of Marxism" (Gov't. Ex. 47) was distributed by Dimow and used by the students in his classes (Tr. 4704). Significantly the local outline (Gov't. Ex. 47) closely follows the context of the National Outline (Gov't. Exs. 3, 3-A) although it is more abbreviated in form.

There are numerous references in the record concerning the availability of such Marxist-Leninist sources as the Little Lenin Library (see, e.g. Tr. 6538, where in January, 1953, a Party member was awarded a set of the Little Lenin Library for obtaining Daily Worker subscriptions). The contents of these books clearly and explicitly call for the forcible overthrow of the existing capitalist state and for the shattering of the governmental apparatus.[29] Pertinent excerpts from all of them were read by the Government in the course of its case. At this point it would seem appropriate to recall a few passages from those excerpts.

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[29] See *United States* v. *Dennis*, 183 F. 2d 201, 206, where Judge Hand stated:

> "There was abundant evidence, if believed, to show that they were all engaged in an extensive concerted action to teach what indeed they do not disavow—the doctrines of Marxism-Leninism. These doctrines were set forth in many pamphlets put in evidence at the trial, the upshot of which is—indeed an honest jury could scarcely have found otherwise—that capitalism inescapably rests upon, and must perpetuate, the oppression of those who do not own the means of production; that to it in time there must and will succeed a 'classless' society, which will finally make unnecessary most of the paraphernalia of government; but that there must be an intermediate and transitional period of the 'dictatorship of the proletariat,' which can be established only by the violent overthrow of the existing government, if that be capitalistic."

There can be no doubt concerning the meaning of such words as Stalin's in "Foundations of Leninism" (Gov't. Ex. 4, p. 56):

> "In other words, the law of violent proletarian revolution, the law of the smashing of the bourgeois state machine as a preliminary condition for such a revolution, is an inevitable law of the revolutionary movement in the imperialist countries of the world. Therefore, Lenin is right in saying: 'The proletarian revolution is impossible without the forcible destruction of the bourgeois state machine and the substitution for it of a new one.'"

Stalin scornfully dismissed any suggestion of peaceful proletarian revolution when after characterizing the revolution, he said in "Problems of Leninism" (Gov't. Ex. 5, pp. 19, 20):

> "Can such a radical transformation of the old bourgeois system of society be achieved without a violent revolution, without the dictatorship of the proletariat?
>
> Obviously not. To think that such a revolution can be carried out peacefully within the framework of bourgeois democracy, which is adapted to the domination of the bourgeoisie, means one of two things. It means either madness, and the loss of normal human understanding, or else open and gross repudiation of the proletarian revolution."

Lenin's words in "State and Revolution" that "the replacement of the bourgeois by the proletarian state is impossible without a violent revolution" (Gov't. Ex. 6, p. 20), do not mean that the road to political power is through the free votes of the citizens. Nor can these

words be dismissed as anything less than a program for resort to force and violence:

> "Marx and Engels taught that it was impossible to get rid of the power of capital and to convert capitalist property into public property by peaceful means, and that the working class would achieve this only by revolutionary violence against the bourgeoisie, by a proletarian revolution, by establishing its own political rule—the dictatorship of the proletariat—which must crush the resistance of the exploiters and create a new classless Communist society." (History of the C. P. S. U., Gov't. Ex. 12, p. 9).

To negate any inference that America is to be excepted from the general pattern of world revolution, in addition to the oral testimony of the prosecution's witnesses we have this statement in "Foundations of Leninism" (Gov't. Ex. 4, pp. 55, 56):

> "Marx's qualifying phrase about the Continent gave the opportunists and Mensheviks of all the countries a pretext for proclaiming that Marx had thus conceded the possibility of the peaceful evolution of bourgeois democracy into a proletarin democracy, at least in certain countries outside the European continent (England, America). Marx did in fact concede that possibility, and he had good grounds for conceding it in regard to England and America in the 'seventies' of the last century, when monopoly capitalism and imperialism did not yet exist, and when those countries, owing to the special conditions of their development, had as yet no developed militarism and bureaucracy. That was the situation before the appearance of developed imperialism. But later, after a lapse of thirty or forty years, when the situa-

tion in those countries had radically changed, when imperialism had developed and had embraced all capitalist countries without exception, when militarism and bureaucracy had appeared in England and America also, when the special conditions for peaceful development in England and the United States had disappeared—then the qualification in regard to those countries necessarily could no longer hold good.

* * * Today, both in England and in America, the 'preliminary condition for every real people's revolution' is the smashing, the destruction of the 'ready-made state machine' (brought in those countries, between 1914 and 1917, to general 'European' imperialist perfection)."

In the political sense the term "revolution" used in Marxist-Leninist writings refers exclusively to an event of violence. Lenin quoted Engels' definition of "revolution" as follows:

"* * * Revolution is undoubtedly the most authoritative thing possible. It is an act in which one section of the population imposes its will on the other by means of rifles, bayonets, cannon, i. e., by highly authoritative means, and the victorious party is inevitably forced to maintain its supremacy by means of that fear which its arms inspire in the reactionaries * * *" (Gov't. Ex. 6, p. 53).

And we should not overlook the words of Marx and Engels in the concluding paragraphs of the Communist Manifesto:

"The Communists distain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrew of all existing social conditions. Let the ruling classes tremble at the

Communist revolution. The proletarians have nothing to lose but their chains. They have a world to win.

Workingman of all countries, unite!" (Gov't. Ex. 11, p. 44).

That a violent revolution as distinguished from a peaceful transition to socialism lies at the very roots of Marxism-Leninism was evidenced by the words of Lenin when he wrote:

> "We have already said above and shall show more fully later that the teaching of Marx and Engels regarding the inevitability of a violent revolution refers to the bourgeois state. It *cannot* be replaced by the proletarian state (the dictatorship of the proletariat) through 'withering away,' but, as a general rule, only through a violent revolution. The panegyric sung in its honour by Engels and fully corresponding to the repeated declarations of Marx (remember the concluding passages of the *Poverty of Philosophy* and the *Communist Manifesto*, with its proud and open declaration of the inevitability of a violent revolution; remember Marx's *Critique of the Gotha Programme* of 1875 in which, almost thirty years later, he mercilessly castigates the opportunist character of the programme)—this praise is by no means a mere 'impulse,' a mere declamation, or a polemical sally. *The necessity of systematically fostering among the masses this and just this point of view about violent revolution lies at the root of the WHOLE of Marx's and Engels' teaching.* The neglect of such propaganda and agitation by both the present predominant social-chauvinist and the Kautskyist currents brings their betrayal of Marx's and Engels' teachings into prominent relief" (Gov't. Ex. 6, pp. 19-20).[30] [Emphasis added.]

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[30] The same principle is stated in "History CPSU" (Gov't. Ex. 12, p. 9) as having been taught by Marx and Engels.

An attempt is made to justify this thesis for violent revolution through an assumption by the Marxist authorities that under no circumstances would the capitalist class surrender its power without a struggle (See Program of the Communist International, Gov't. Ex. 14, pp. 36-37). Co-conspirator Foster stated the proposition thusly:

> "The capitalists will never voluntarily give up control of society and abdicate their system of exploiting the masses. Regardless of the devastating effects of their decaying capitalism; let there be famine, war, pestilence, terrorism, they will hang on to their wealth and power until it is snatched from their hands by the revolutionary proletariat.
>
> The capitalists will not give up of their own accord; nor can they be talked, bought or voted out of power. To believe otherwise would be a deadly fatalism, disarming and paralyzing the workers in their struggle. No ruling class ever surrendered to a rising subject class without a last ditch open fight. To put an end to the capitalist system will require a consciously revolutionary act by the great toiling masses, led by the Communist Party; that is, the conquest of the State power, the destruction of the State machine created by the ruling class, and the organization of the proletarian dictatorship. The lessons of history allow of no other conclusion.
>
> It is the historical task of the proletariat to put a last end to war. Nevertheless, the working class cannot itself come into power without civil war. This is not due to the choice of the toilers: it is because the ruling class will never permit itself to be ousted without such a fight. 'Force,' says Marx, 'is the midwife of every old society when it is pregnant with the new one;

force is the instrument and means by which social movements hack their way through and break up the fossilized political forms.'" (*Toward Soviet America*, Gov't. Ex. 45, pp. 213-14).

The record discloses that these appellants in the Connecticut Communist Party were wholeheartedly in accord with the revolutionary policy of the National leaders. For example, the appellant Goldring during a conversation with the witness Gay stated that Communism in the United States could never be achieved through the use of the ballot; that the capitalistic system would never give up without a struggle and that he (Goldring) agreed with the Marxist-Leninist theory that communism would be achieved either through an internal revolution or through the conversion of the imperialist war into one of a revolutionary nature. Goldring further stated that the Communist Party would be the leader in the proletariat revolution (Tr. 1783-85).[31]

The foregoing is but a brief analysis of the Marxist-Leninist doctrine of violent overthrow which was propounded within the Communist Party, both prior to the 1944 dissolution of the Party and after its reconstitution in 1945.[32] As the record readily indicates from the testimony of the witness Lautner (Tr. 2631) these "classics" were circulated and distributed among the Party members for study and guidance. The record also indicates that the "classics" distributed and circulated prior to 1944 were

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[31] This conversation took place in 1946 at the General Electric plant where both the witness and the appellant worked in the same section. They were also local officers of the Communist Party during this period (Tr. 1783).

[32] This court is not uninformed as to the violent revolutionary tenets of the Marxist-Leninist writings having reviewed them *in extenso* in *Dennis* and *Flynn*, *supra*.

the identical ones circulated and distributed within the Party after 1945 (Tr. 2622-2631). Indoctrination in the contents of these "classics" was an ever continuing process. The testimony of Lautner clearly discloses that these "classics" were circulated and distributed for self-study by Party members; that new Party members were required to attend new member classes; and that these very "classics" were used as textbooks in the various schools which he participated in, either as a student or a teacher (Tr. 2622-2631).

It is therefore clear that in July, 1945, when the Communist Party of the United States of America was reconstituted, basing itself on the principles of Marxism-Leninism; when it "suddenly reverted to its basic Communist principles" (Gov't. Ex. 21, p. 61), the Party was not charting a new course of action which suddenly had come upon an unsuspecting world. The Party including these appellants and their co-conspirators was simply reverting to the Marxist-Leninist doctrine of violent overthrow briefly outlined in the preceding pages.[33]

F. Appellants' Participation in the Conspiracy.

The activities of these appellants within the periphery of the conspiracy as well as within the framework of the Communist Party are summarized by appellants (App. Br. Appendix "B"). Additionally, however, there is substantial evidence, as to each of the appellants, which establishes their knowledge of the illicit objectives of the conspiracy and which is briefly summarized as follows:

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[33] Appellant Stone during a discussion of communism in 1946 was questioned as to how far the Communist Party in this country would go to gain their objectives. She replied, "Frankly, Annie, if necessary we'll have bloodshed" (Tr. 5072).

Sid Taylor

The appellant Taylor, the present chairman of the Communist Party of Connecticut, was an active Party member as early as 1939. He actively recruited members into the Party and its youth arm, the Young Communist League, in the late 1930's and early 1940's. As early as 1941 he organized Marxist-Leninist classes and directed students to attend. One school which was devoted to the Marxist-Leninist training of young Party members had as its chief instructor one Joseph Clark who had been sent to Connecticut by the National Office of the C. P., U. S. A. Taylor at the first session of the school distributed "Foundations of Leninism", "Problems of Leninism", "State and Revolution", and "The History of the Communist Party of the Soviet Union" to the students and urged them to read and study these books carefully. He stated that they contained the principles of Marx and Lenin which the students would have to follow if they were to become future Party leaders (Tr. 6356). During the first class at which Taylor was present the instructor Joe Clark explained the concept of the class struggle. He said that in the United States one class was pitted against another. The only way that socialism could be established was by getting rid of the fascist leaders who were the rulers in this country and through a dictatorship of the proletariat by conquest of power (Tr. 6360).

In 1946 Taylor attended classes held in New Haven, Connecticut. The instructor pointed out that the Soviet Union was a dictatorship of the proletariat. It was also pointed out that under capitalism war was inevitable and the only way to get rid of war was to destroy capitalism. The source material for this class was the "History of the Communist Party of the Soviet Union" (Gov't. Ex. 12) (Tr. 4481-4482).

At a later class attended by the appellant Dimow as well as Taylor, the instructor stated that socialism is inevitable because we Communists will fight for it. He stated further that the United States sought war with Russia, but even though the United States was able to wipe out the Russians, the people would rise from the underground to carry on the fight for the Communist goal (Tr. 4519). Taylor himself spoke stating that "come the revolution, we'll allow the people to have the church for a little while" (Tr. 4520).[34]

In 1947, Taylor together with appellants Dimow and Goldring attended a closed Communist Party meeting in New Haven, Connecticut. At this meeting Jack Stachel, a member of the National Board of the C. P. U. S. A. and a co-conspirator, conducted a class on Marxist theory. He

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[34] Appellants attempt to pass over the evidence which clearly establishes their knowledge of, and adherence to, violent revolutionary tenets of the Communist Party (App. Br. 59-63). However, the record is clear that most of the statements concerning which they complain, that is statements by appellants themselves or by co-conspirators in their presence, were made at official Communist Party classes and meetings. Thus, these statements were admissible not only as bearing on the individual intent of the appellants but are binding on all as acts in furtherance of the conspiracy. *United States* v. *Gypsum Co.*, 333 U. S. 364, 393. The weight to be given such statements was a matter peculiarly within the province of the finders of fact. *United States* v. *Spagnuolo* (C. A. 2, 1948) 168 F. 2d 768, 770. However, considered in the light of the basic Marxist-Leninist doctrine which was being taught at the classes attended by Taylor and Dimow, the jury could not reach any other conclusion but that both these appellants understood and supported the Communist Party strategy of violent proletarian revolution. As Mr. Justice Harlan pointed out in *Flynn, supra*:

> "So here the relationships of the defendants and of others acting in concert with them; one with another, the defendants' positions of responsibility in the Communist Party, their activities in carrying forward the objectives of the Party, and the nature of those objectives were all matters properly to be considered upon the 'intent' of any particular defendant."

stated that the masses were not yet ready to move against capitalism so that the main strategy today was to attach themselves to many groups and organizations in order to curb capitalism wherever possible. However, he specifically pointed out that the strategic aim of the Communist Party was as it had always been, to destroy capitalism and establish the dictatorship of the proletariat (Tr. 4530-4533).

Later in 1947, Taylor organized, and assigned Communist Party members to attend, a nine-day Marxist training school. Both Taylor and the appellant Goldring attended the school at which the principal instructor was George Siskind[35], a representative of the National Office of the C. P. U. S. A. The Marxist-Leninist pamphlets, such as "Imperialism" (Gov't. Ex. 7); "History of the Communist Party of the Soviet Union" (Gov't. Ex. 12); "Foundations of Leninism" (Gov't. Ex. 4); "The Communist Manifesto" (Gov't. Ex. 11) and others were studied in connection with these classes. Among other things, Siskind taught the Communist Party members that Fascism could be prevented by the working class led by the Communist Party taking action at the proper time to overthrow the present system of government.

During this same period Taylor arranged Communist Party meetings which featured such prominent members of the National Office of the C. P. U. S. A., as John Pittman from the Daily Worker (Tr. 4568-4569), Henry Winston (Tr. 4566), and Betty Gannett (Tr. 4681-4693).

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[35] Another instructor, Joseph Roberts, at that time chairman of the Communist Party of Connecticut, stated that the readings in the Marxist-Leninist classics applied to present day conditions in this country (Tr. 5511-5549).

He actively participated in the state convention of the Communist Party of Connecticut in 1948 (Tr. 4594-4596). He participated in a three-day school during Memorial Day weekend 1949 at which one of the instructors predicted the destruction of capitalism in this country by the Communist Party. Another instructor, Mike Russo,[36] urged the Communist Party members present to study the Marxist-Leninist literature as well as the other material issued by the Communist Party (Tr. 6443-6446). Taylor also actively participated in a State Seminar at which Nat Ross from the National Office of the C. P. U. S. A. spoke in praise of the life work of Stalin (Tr. 4673-4680). In 1950 he participated in Communist Party meetings with Elizabeth Gurley Flynn, identified as a member of the National Committee of the C. P. U. S. A. (Tr. 2417). She spoke on the revolutionary activities of Lenin and predicted that in this country capitalism would crumble as the temple fell on Sampson.

During the fall of 1950 Taylor was establishing security measures in the Communist Party and instructed the witness Paumi that she was to be a courier (Tr. 6464). At his request she met him in New York. At the time he had taken measures to alter his appearance and was using the name Vito, the first of a number of fictitious names he was to use thereafter. He informed her that under instructions from the National Office of the Communist Party he and the other leaders of the Party in Connecticut were operating undercover in New York. Contact with the Communist Party in Connecticut was being maintained through a courier system (Tr. 6507-6509). Taylor's living expenses were being paid by the National Office of the C. P. U. S. A.

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[36] Co-conspirator Russo was State Chairman of the Communist Party of Connecticut from 1947 through 1949 (Tr. 1781, 4594). He later became an assistant to Betty Gannett who was assistant organizational secretary of the C. P. U. S. A. (Tr. 3395). He later became a Party leader in Massachusetts (Tr. 6517).

(Tr. 6512). In the course of subsequent meetings with Paumi, Taylor informed her that the Communist Party was the vanguard of the working class and that the Communists would take over the present form of government and establish socialism (Tr. 6515).

In late 1952 and during 1953 Taylor attended a series of secret meetings in Connecticut. Many of the meetings were held for the purpose of implementing the Industrial Concentration program in Connecticut, particularly at the General Electric Plant in Bridgeport. Appellant Stone, using the alias Comrade Ruth, was present at several of these meetings. (Tr. 6237-6241; 5159).

In 1954 a concealed five-man State board was organized to govern the Communist Party of Conecticut. Taylor under instructions from the National Office of the Communist Party became its chairman. Appellants Goldring and Ekins were also members. This board was responsible for the operations of the Communist Party of Connecticut and continued to function until Taylor and the other appellants were arrested. Its operations were characterized by the highest degree of secrecy. Despite the high degree of security concerning the activities of the top leadership of the Communist Party of Connecticut, the so-called open party members continued to carry out their activities in Connecticut, restricted, however, to the degree necessary to achieve security.

Joseph Dimow

Appellant Dimow, a member of the State Committee of the Communist Party of Connecticut, was active in the educational apparatus of the Party. In 1946 he was the principal instructor in a closed Party school in Connec-

tieut. During the course of his instruction he pointed out to the students that the United States was an imperialist nation and that the United States sought war with the Soviet Union. He continued by saying that if we do not have socialism in the United States within the next ten years, we face war. Inasmuch as the people do not want war, it leaves the possibility of revolution (Tr. 4479-4480). At a later class in this series Dimow and Taylor were present when a Party instructor taught the class that the destruction of capitalism in this country was inevitable. At the last class in this series, Dimow instructed the class on strategy and tactics using as his source material Chapter VII of "Foundations of Leninism" (Gov't. Ex. 4).[37] Dimow in interpretating strategy and tactics to the class pointed out that the capitalists sought war with the Soviet Union and that the Communist Party tactics were to stall them off with peace talk so the Communist movement would have time to develop China.

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[37] The clear, unequivocal call for the violent revolutionary overthrow of capitalism in all countries of the world, in this the era of imperialism, is a principal theme of Chapter VII of "Foundations of Leninism":

> "Strategy is the determination of the direction of the main blow of the proletariat at a given stage of the revolution, the elaboration of a corresponding plan for the disposition of the revolutionary forces (the main and secondary reserves), the fight to carry out this plan throughout the given stage of the revolution." (page 90)

> "Third stage commenced after the October Revolution. Objective: to consolidate the dictatorship of the proletariat in one country, using it as a base for the overthrow of capitalism in all countries. The revolution is spreading beyond the confines of one country; the period of world revolution has commenced." (page 91)

Stalin continues at page 95 and describes the revolution as an insurrection that must be carried out with the greatest "determination" and continues by stating that:

> "The defensive is the death of every armed uprising. You must take the enemy by surprise and seize the moment when his forces are scattered."

This, he pointed out, would put the Soviet Union in a position to take over the capitalist countries. He characterized the Communists in this country as an army. The Marxists were the Generals and the students studying Marxism were the officer corps (Tr. 4520-4521).

In 1947 appellant Dimow in his capacity as chairman of the Education Committee of the Communist Party of New Haven was responsible for the organization of a series of Marxist classes. A mimeographed outline (Gov't. Ex. 47) which was a condensed form of the "Outline on the Fundamentals of Marxism", issued by the National Education Committee of the C. P. U. S. A. (Gov't. Ex. 3) was the principal source material for these classes. Dimow himself was present at some of these classes. (Tr. 4705-4709).

There is additional evidence of appellant Dimow's educational activities. He, together with the appellants and their co-conspirators, urged the initiates to read and study the basic Marxist classics, as well as the "Daily Worker", "Political Affairs", "Study Course on the Communist Party, the Working Class and Industrial Concentration" (Gov't. Ex. 28), all of which were official publications of the C. P. U. S. A. (Tr. 4712-4730).

Dimow, as did appellant Taylor, engaged in the underground operations of the Party (Tr. 6519), attending secret functionary meetings held during the indictment period (Tr. 5057-5060; 6526-6528). He attended a meeting in 1953 in which the continued emphasis placed by the Party on the Marxist-Leninist indoctrination of Party members was pointed up. It was at this meeting that a member was awarded a set of the Little Lenin Library for his work in obtaining subscriptions to the Party press. (Tr. 6539).

Robert Ekins

The appellant Ekins, the only defendant who testified during the trial, joined the Communist Party in 1937 after a thorough study of the Party's program (Tr. 7103). In addition to those Party positions listed in Appendix "B" of Appellants' brief, Ekins admitted being an Educational Director and organizational secretary of a section in the New York State District of the C. P. U. S. A. as early as 1937 (Tr. 7132). In the early 1940's and again from 1945 until 1949 he was chairman of an upstate section of the Communist Party of New York (Tr. 7147-7148; 7188). He attended the National Convention in 1948 (Tr. 7433) and throughout his testimony freely admitted his familiarity with, and adherence to, the principles of the C. P. U. S. A. He admitted his participation in the underground apparatus of the Communist Party of Connecticut and was identified as a member of the concealed State Board of the Communist Party of Connecticut in 1954 (Tr. 5142; 5288).

In late 1952 Ekins, together with the appellants Taylor and Dimow, attended a meeting of the Communist Party of Connecticut at which Doxie Wilkerson, a Communist Party member from New York, led the discussion.[38] Wilkerson discussed the history of the Communist Party and pointed out that during the Browder period the C. P. U. S. A. had deviated from the principles of Marx and Lenin but that happily they had returned to these basic principles. In early 1953 he conducted a series of Marxist classes based on a pamphlet by J. Stalin entitled "Economic Problems of Socialism in the USSR". It was during this series of classes that Ekins explained that the

[38] Doxie Wilkerson, a former member of the National Committee of the C. P. U. S. A. and the "dean" of the Jefferson School of Social Science, was also a witness for the appellants.

Communists do not support imperialist wars but that they do support just wars. He pointed out that the Korean war was an unjust war because South Korea with the assistance of the United States had invaded North Korea. He then went on to say that the Communists would do all they could to support North Korea. In discussing just and unjust wars he pointed out by way of example that if the people of Puerto Rico were to revolt and throw off the yoke of the capitalists that would be a just war and the Communists would support the people of Puerto Rico.

Later in the same class, Ekins stated that war between socialism and capitalism is inevitable but that the Communists and Russia are not ready for war. He explained that when a just war breaks out, the Communists will know capitalism is on the way out. In the meantime the only way the Communists can fight against unjust wars is by passive means, such as the peace organizations. When asked by a student as to why the Communist Party bothers with peace organizations when they know that war between capitalism and socialism is inevitable, Ekins answered by saying that "we, (the Communists), are not ready yet."

In the last of this series of classes Ekins spoke in praise of the Soviet Union. He also informed the students that the Marxist classes had been a success and that they needed more Marxist classes but that a shortage of instructors made it impossible to indicate when another series of classes could be held (Tr. 5124-5137; 6532-6537).

Later, in 1953, Ekins attended a secret meeting of the State Negro Commission in West Haven, Connecticut. The principal speaker was "Comrade Frances" from the National Office of C. P. U. S. A. whose true name Ekins claimed was unknown to him. She advocated self-deter-

mination for the Negroes in the so-called black belt of the South so that they might have their own nation in that part of the United States. One of the members of the State Negro Commission stated that some people cannot learn by reading books and it is necessary to knock their heads together. He pointed out that "soon we're going to have a recession, then a depression, then we'll have the socialist revolution we've all been waiting for" (Tr. 5164-5184).

Throughout the indictment period Ekins was extremely active in support of the Party's program until he, together with appellants Taylor and Goldring, was arrested in May 1954 while attending a secret meeting of the concealed State Board in New York City.

Jake Goldring

Appellant Goldring, like the other appellants, was a long time member of the Party and fanatically dedicated to its revolutionary tenets. As early as 1941 he was busy recruiting members for the Communist Party. Several of the Marxist classes taught by George Siskind in 1941 were held at his home (Tr. 6367-6369). He took great pains to emphasize the importance of learning and understanding the principles of Marxism and personally recommended the use of the basic Marxist classics (Tr. 6387-6389).

In July 1945 Goldring attended the State Convention of the Communist Political Association which reconstituted the Communist Party of Connecticut.

As to Goldring's personal intent there can be no question. In 1946, while discussing the doctrines of the C. P. U. S. A., he stated that "Communism in the United States

could never be achieved through the use of the ballot, that the capitalistic system would never give up without a struggle, and that he (Goldring) agreed with the Marxist-Leninist theory that Communism would be achieved either through internal revolution or through the conversion of the imperialist war into one of a revolutionary nature. The Communist Party would be the leader, in the leadership in the changing of the character of an imperialist war" (Tr. 1783-1785). According to the witness Gay, Goldring made similar statements on other occasions as well (Tr. 1842-1843).

As did the appellants Taylor and Dimow, Goldring attended other Communist Party meetings in the late 1940's at which the necessity for the revolutionary overthrow of the United States was discussed and advocated (Tr. 4530-4534; 5513-5514; 5540-5543; 5546-5549; 4677-4680).

In 1950 Goldring attended a Communist Party meeting at which the Korean War was discussed. He informed the Party members that he had received a telegram from the National Office of the C. P. U. S. A. concerning the Party position on the Korean War. He informed the meeting that it was the position of the C. P. U. S. A. that the South Koreans had invaded North Korea and that the Communist Party should help the North Koreans. He stated further that the National Office of the C. P. U. S. A. had instructed the members to pass out petitions and to discourage persons from joining the military service (Tr. 6462).

From 1950 until 1954, as pointed out heretofore, Goldring together with the other appellants was an active participant in the underground apparatus of the Communist Party of Connecticut. He attended numerous secret meetings until his arrest at a secret meeting of the con-

cealed State Board of the Communist Party of Conneticut in New York City in May 1954.

In 1953 he participated in the planning of secret Marxist classes which were held in Connecticut and directed several Party members to attend the classes (Tr. 5189). At a secret meeting of the City Committee of Bridgeport in the same year, he discussed the importance of Marxist classes, in conjunction with the regular Party meetings, as well as at more formalized schools (Tr. 5193-5194; 5197).

Again in 1953, at an important Communist Party meeting, he emphasized the importance of concentrating Party members in the key basic industries. He urged the women in the Communist Party to make every sacrifice to help implement this program, even to the extent of hiring baby sitters to mind their children while they went into industry (Tr. 5205).

From the totality of the evidence presented of which this is but a brief summary, it is impossible to reach any other conclusion but that Goldring was a fanatical member of the Party, fiercely dedicated to the task of carrying out the illicit objective of violent overthrow of the present Government of the United Sates.

Martha Stone

Appellant Stone, who was introduced to certain members of the Communist Party of Connecticut as Comrade Ruth, has held important Party positions since 1933. Since 1950 she has shared with the *Dennis* defendants and Elizabeth Gurley Flynn (*Flynn* case, *supra*) the responsibility for carrying out the national policy of the C. P. U. S. A. Among her specific duties has been that of coordinating

the activities of the underground apparatus of the Communist Party of Connecticut (Tr. 5266-5267).

The evidence as to Stone's indoctrination in the revolutionary tenets of Marxism-Leninism dates back to the 1930's when she attended organizational meetings of the Communist Party of New York State at which the policies of the C. P. U. S. A. were discussed (Tr. 2394-2395). She attended the Seventh World Congress of the Communist International held at Moscow, U. S. S. R. in 1935 and the National Convention of the C. P. U. S. A. held at New York City in 1936. In 1938-1939 she attended the National Training School of the Communist Party. At this school she was a group leader (Tr. 2075; 2132). The instructors at this school were such now familiar names as William Z. Foster, Earl Browder, George Siskind, Elizabeth Gurley Flynn, Jack Stachel, Alexander Bittelmann, Gil Green, Alexander Trachtenberg, James W. Ford, and others.

A detailed discussion of the instruction received by Stone at the school, while it would be very illuminating as to the knowledge and intent of the appellant, is not practical within the confines of this brief. However, it will suffice to point out that the instruction covered a period of approximately nine months and was based on such Marxist-Leninist documents as "Foundations of Leninism", "Imperialism", "State and Revolution", "The Communist Manifesto", and others (Tr. 2166). The instructors emphasized the importance of a well organized and well disciplined Communist Party that would be able to organize and mobilize the people to overthrow their own government, smash the rule of the capitalists and institute the dictatorship of the proletariat. In this connection the students studied and discussed the lessons of the Russian revolution as a guide for the forthcoming proletarian

revolution in this country (Tr. 2171-2173). They also were instructed concerning the form of Soviet Government which would rule this country after the successful proletarian revolution (Tr. 2175-2176). The Communist concept of just and unjust wars was studied and plans for turning the so-called imperialist war into a civil war were discussed. As in so many of the later classes, the importance of defending the aims of the Soviet Union was also discussed (Tr. 2177-2178).

That appellant Stone was fully conversant with the violent revolutionary objectives of the C. P. U. S. A. is not only evident from her participation at the National Training School. In 1946 at a meeting in which the objectives of the C. P. U. S. A. were being discussed she frankly stated that "if necessary we'll have bloodshed" (Tr. 5071).

Appellant Stone's loyalty to the Party's program is amply reflected in her untiring efforts in its behalf. Her efforts to recruit members from among the leadership of the unions (Tr. 5075-5078), as well as her efforts to intensify the industrial concentration program in Connecticut mark her as a dedicated Party leader (Tr. 5291-5293). Her selection as an alternate member of the National Committee of the C. P. U. S. A. clearly reflects her dedication to the violent revolutionary overthrow of the Government of the United States.

The evidence concerning the existence of the conspiracy, its aims and objectives, the participation of each of these appellants in its illicit program, their knowledge and intent, is such that the jury verdict is fully supported by the record.

Argument

Preliminary Statement

The case under consideration in this appeal is one of a series of cases in which judgments of conviction have been entered against defendants charged with conspiracy to violate the Smith Act. This court has reviewed and affirmed two prior cases, *Dennis* and *Flynn, supra,* in which the issues of fact and law were substantially the same as those in the present appeal. The issues raised by the present appellants which pertain to prosecution under the Smith Act are neither novel nor persuasive, but for the most part constitute an extensive restatement of questions hitherto ruled upon by this court, the Supreme Court and other appellate courts.

The appellants have argued their basic contentions under four separate headings. However, under each heading there are numerous sub-headings containing subsidiary specifications of error in support of the contention of error set forth in each principal heading. Many of the arguments are interrelated and are urged in support of several contentions. Therefore, no attempt is being made to answer each argument in the order and under the heading used by appellants.

I

The Smith Act as applied in this case does not violate the Constitutionally protected rights of the appellants.

a. Scope of Appellate Review

The scope of appellate review of evidence presented to a jury is so well settled that it would not be necessary to mention it in the usual case. However, appellants have devoted so much space to minimizing the evidence, to drawing every conceivable unfavorable inference from the evidence and to a broadside attack upon the credibility of the Government's witnesses that a brief recapitulation of the basic principle underlying appellate review of a criminal case is in order.

As this case comes before this court, the sole issue relating to the sufficiency of the proof is whether "there was some competent and substantial evidence before the jury fairly tending to sustain the verdict". A verdict supported by sufficient evidence is binding on a reviewing court. *United States* v. *Socony-Vacuum Oil Co., Inc.*, 310 U. S. 150, 154, *Glasser* v. *United States*, 315 U. S. 60, 80:

> "It is not for us to weigh the evidence or to determine the credibility of witnesses. The verdict of a jury must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it. *United States* v. *Manton*, 167 F. 2d 834, 839, and cases cited. Participation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a

'development and collocation of circumstances'. *United States* v. *Manton, supra.*"

See also *Abrams* v. *United States,* 250 U. S. 616, 619; *Carlson* v. *United States,* 187 F. 2d 366, (C. A. 10) cert. denied 341 U. S. 940; *Hulahan* v. *United States,* 214 F. 2d 441 (C. A. 8) certiorari denied 348 U. S. 856; *Jensen* v. *United States,* 213 F. 2d 781 (C. A. 8) certiorari denied 348 U. S. 835; *McGuinn* v. *United States,* 191 F. 2d 477 (C. A. D. C.); *Orvis* v. *Higgins,* 180 F. 2d 537, 539 (C. A. 2), certiorari denied 340 U. S. 810.

b. Sufficiency of the Evidence

As pointed out heretofore, this case is one of a series of prosecutions for conspiracy to violate the Smith Act. In each of the cases reviewed by appellate courts the evidence was found to be sufficient. *Dunne* v. *United States,* 138 F. 2d 137, 147-152 (C. A. 8) certiorari denied 320 U. S. 790; *United States* v. *Dennis, supra; Frankfeld* v. *United States,* 198 F. 2d 679, 684-687 (C. A. 4) certiorari denied 344 U. S. 922; *Yates* v. *United States,* 225 F. 2d 146, 163-164 (C. A. 9) cert. granted 350 U. S. 860; *Wellman* v. *United States,* 227 F. 2d 757, 771-773 (C. A. 6). Although the Supreme Court affirmed the decision of this court in *Dennis* without passing directly on the sufficiency of the evidence, the evidence was accorded considerable approval in the various opinions handed down by the Court. In the *Flynn* case the appellants did not raise the question of the sufficiency of the evidence, but this court pointed out at page 358 "[w]e are satisfied that it was ample both to require the submission of the case to the jury and to sustain the verdict". This, of course, also answers appellants' contention that the striking of the organizing branch of the indictment by the trial court breaks the thread of evidence which ties the appellants to their co-conspirators, particularly those co-conspirators who were convicted

in *Dennis* (App. Br. page 28). This court in *Flynn* was confronted with an identical situation when it affirmed the conviction in that case. In *Flynn* the trial court, as in the instant case, held that the organizing part of the indictment was barred by the statute of limitations but *Flynn* was affirmed nonetheless.

In *Dennis* this court reviewed and discussed the sufficiency of the evidence pointing to the teaching and advocacy of the necessity for the violent overthrow of the present Government of the United States. At pages 206-207 of the *Dennis* opinion Judge Hand pointed out:

> "The defendants protest against this interpretation of their teaching and advocacy. They say that the use of 'force and violence' is not part of their program, except as it may become necessary after the proletariat has succeeded in securing power by constitutional means * * *. It is unnecessary to quote in detail the many passages in the pamphlets and books, published and disseminated by the defendants, which flatly contradict their declarations that they mean to confine the use of 'force and violence' to the protection of political power, once lawfully obtained. The prosecution proved this part of its case quite independently of the testimony of its witnesses, though the jury might have relied upon that had it stood alone. The sufficiency of the evidence therefore comes down to whether it is a crime to form a conspiracy to advocate or teach the duty and necessity of overthrowing the government by violence, and to organize the Communist Party as a group so to teach and to advocate."

The conclusion reached by this court in *Dennis* is equally applicable here inasmuch as these appellants were actively engaged in implementing the conspiracy initiated by the *Dennis* defendants. The interrelation between these appel-

lants and their co-conspirators is apparent from the evidence and indeed appellants concede "that the conspiracy which is the subject of this indictment is continuing in nature" (App. Br. page 46). The conspiracy being the same in both cases, the differing stations occupied by the conspirators within the framework of the conspiracy are not a controlling or distinguishing factor. Compare *Hyde* v. *United States*, 225 U. S. 347, 379-380; *Lew Moy* v. *United States*, 237 Fed. 50, 52 (C. A. 8).

The defendants in the *Frankfeld* case, *supra*, who were leaders of the Communist Party at the District level as are these appellants (with the exception of appellant Stone who is on the national level with the *Dennis* defendants), were convicted under an indictment substantially identical with the instant indictment. The appellate court in *Frankfeld* reviewed the evidence in detail and found it amply sufficient:

> "By reason of the positions held by these persons in the party and the active part taken by them in its work, the jury were amply justified in concluding that they had knowledge of its purposes. It is well settled that persons who join a conspiracy with knowledge of its unlawful purposes make themselves parties thereto and are equally guilty with those who originated it [citing cases]. As said by Mr. Justice Jackson in *American Communications Association* v. *Douds*, 339 U. S. 382, 433, 70 S. Ct. 674, 701, 94 L. Ed. 925, * * * personal guilt may be incurred by joining a conspiracy. That act of association makes one responsible for the acts of others committed in pursuance of the association." (686-687)

The appellate courts in other Smith Act conspiracy cases involving District and State leaders of the Com-

munist Party have reached similar conclusions. See the *Yates* and *Wellman* cases, *supra*.

The indictment in the instant case closely parallels the *Dennis* indictment. Its validity was specifically upheld by the Supreme Court in *Dennis* at page 516

> "We hold that §§2(a)(1), 2(a)(3) and 3 of the Smith Act, do not inherently, or as construed or applied in the instant case, violate the First Amendment and other provisions of the Bill of Rights, or the First and Fifth Amendment because of indefiniteness."

The evidence in support of the conviction of these appellants amply supports the verdict returned by the jury. As set forth in the Statement of Facts, *supra*, the evidence offered in the instant case substantially parallels the evidence of the conspiracy in *Dennis*. Indeed these appellants were found to have conspired with the *Dennis* defendants. In both cases, the Government presented the testimony of former high ranking Communists, supported by the writings of the conspirators, to prove the violent revolutionary principles of Marxism-Leninism on which the Party based itself.

We are not dealing with persons who are strangers to each other or mere casual acquaintances who happen to come together for an isolated venture. These appellants, as shown by the evidence, are dedicated Communists in the true Leninist sense, who live by and for the Party. They were the top functionaries of the Communist Party within the State of Connecticut. All actively engaged in Communist Party activities during their adult years. All, together with the other co-conspirators, have dedicated themselves to the establishment of the dictatorship of the proletariat in the United States.[39]

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[39] It is painfully clear from the record that the so-called "political" nature of the Communist Party is a mere sham.

Appellants were the central figures who controlled the Communist Party in Connecticut. Indisputably they were the top policy making and administrative officials of the Communist Party in Connecticut, working in close conjunction with their co-conspirators, the National Party leaders who in turn exercised control on a national level. By virtue of the Marxist-Leninist doctrine of democratic centralism, appellants maintained a tight discipline over all members and lower officials of the Party which insured the execution of Party instructions from above and foreclosed Party activities inconsistent with the established Party line.

Without restating again the evidence set forth in the Statement of Facts, *supra*, it is clear that the jury had before it for its consideration evidence which established the following:

The Communist Party was organized on Marxist-Leninist principles of organization, (Gov't. Exs. 3, 17, 28, 34, 53) which had stood the test of the violent Bolshevik revolution of 1917. Appellants and the Party have followed the practice of using devious devices for concealing their activities and true aims and objectives.[40] The uncontradicted evidence shows the existence of an organized underground apparatus, the existence of secret schools and

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Appellants themselves cite figures to prove that at no time in its history has the Communist Party secured even a semblance of legitimate political recognition by the electorate in this country (App. Br. p. 108). This combined with the ludicrous testimony of the appellant Elkins concerning his "nomination" on the Communist Party ticket for Attorney General of Connecticut in 1954 establishes that the Communist Party in no way conforms to the criteria that identify the legitimate political parties in this country.

[40] See *Blumenthal* v. *United States*, 332 U. S. 539, 577. "Secrecy and concealment are essential features of successful conspiracy. The more completely they are achieved the more successful the crime."

classes, the use of protective language in Party documents, precautions taken with regard to the use of the normal means of communications and other measures taken to preserve the secrecy of the Party's activities.[41] Every Party member from appellants to the newest recruits was subject to the principle of democratic centralism which the Communist Party of the Soviet Union found, from experience, insures the strictest and truly iron discipline (Gov't. Ex. 12, see Statement of Facts, *supra*, page 23). Extreme efforts were exerted to establish Party members in the basic industrial plants in the United States. Party members were subjected to a process of indoctrination and education in the fundamentals of Marxism-Leninism in order to train them for their roles as leaders of the working class in the proletarian revolution (Gov't. Exs. 3 and 17).[42]

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[41] Appellants describe their conceded use of these techniques as "purely defensive" (App. Br. p. 66) against what is referred to as the atmosphere of McCarthyism (Tr. 7283) and so-called "harassment" by the F. B. I. (Tr. 7278). The record, however, contains no evidence that the appellants were in any way prevented from engaging in legitimate activity prior to their arrest in this case. The evidence establishes that on a few occasions during a period when six high ranking leaders of the Party were fugitives from justice (Henry Winston and Gil Green convicted in *Dennis, supra;* James Jackson, Fred Fine, William Norman and Sid Stein indicted in *Flynn, supra*) the F. B. I. for short periods of time closely observed the activities of the appellants (Court Ex. #C5). At no time was any effort made to physically restrain or interfere with any of the activities of the appellants. The methods used to observe the clandestine activities of the appellants and the Party were proper and necessary for the protection of the country from subversive organizations. The F. B. I. would have been remiss in its duty to have ignored the activities of the Communist Party and these appellants.

[42] Appellants' contention that the evidence does not establish the Party's continued adherence to and advocacy of the basic tenets of Marxism-Leninism during the period March 4, 1952 to March 5, 1955, is categorically refuted by their own evidence (App. Br. pp. 39 et seq.). In "History of the Communist Party

Briefly stated, the Party classes and schools persistently made plain to the Party members the program of Marxism-Leninism. To this end they were taught from the Marxist-Leninist classics and to a substantial degree from the other writings emanating from the leaders of the C. P. U. S. A. This teaching demonstrated to the initiates tha (1) their employers are their enemies in a class war which persists in our capitalist society, and that they control the Government of the United States and use it as a repressive force against the workers; (2) that the United States is an imperialist Government which threatens the aspirations of the peoples of the world for peace, democracy and progress; (3) the present Government is presently decaying and is in its last stage of existence and this is the threshold of the violent proletarian revolution; (4) the Government will not collapse by itself but must be seized by the proletariat and replaced by the dictatorship of the proletariat; (5) the proletariat must resort to force and violence in their quest for power and must completely smash and destroy the existing state machine; (6) the dictatorship of the proletariat which arises from the

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of the United States" (Def. Ex. V) William Z. Foster, the Chairman of the CPUSA, states at page 1:

> The life history of the Communist Party is also the history of Marxism for a century in the United States. The C. P. U. S. A. is the inheritor and continuor of the many American Marxist parties and organizations which preceded it during this long period. It incorporates in itself the lessons of generations of the political struggle by the working class; of the world existence of the first, second, and third internationals; of the writings of the great socialist theoreticians, Marx, Engels, Lenin, Stalin; and of the great revolutions in Russia, China, and Central and Eastern Europe.

Foster's principal source materials as indicated by the footnotes throughout the "History" published in 1952 are the basic Marxist-Leninist documents, such as "Problems of Leninism", "State and Revolution", "Foundations of Leninism", "Left Wing Communism", "An Infantile Disorder", "The Communist Manifesto", all familiar as exhibits in the case.

successful proletarian revolution must be a government which favors the worker and forcibly suppresses the vanquished bourgeoise; (7) the workers will not rise up spontaneously but must be led and directed by the Party, whose historic mission is to execute a successful violent revolution and establish the dictatorship of the proletariat; (8) the workers in the United States are bound together with the workers of the Soviet Union as the Soviet Union is the fatherland of the proletarian revolution; and (9) in all their endeavors directed at fulfilling the historic mission of the C. P. U. S. A., its members must understand and be guided by the experiences of the Communist Party of the Soviet Union.

c. Credibility of the Witnesses

Although it is a basic principle of criminal procedure that the credibility of witnesses is a matter to be resolved by the triers of fact, that is the jury in the instant case, appellants have devoted a not inconsiderable portion of their brief to a discussion of the Government witnesses (App. Br. 67-80). They do not allege prejudice by reason of any limitation as to their right of cross-examination, for, indeed, they cannot. The plain purport of their argument is to malign the character and credibility of practically all of the Government witnesses.

Appellants' argument is readily answered in the light of the record. The trial judge, in the exercise of his discretion, permitted unrestricted cross-examination of each Government witness. With one or two exceptions each witness was cross-examined by four defense attorneys which in many instances resulted in the repetition of questions as many as three or four times by different counsel. During the defense summations to the jury the

witnesses were treated with every form of vituperation that defense counsel could call upon. Appellants' brief contains but a mild summary of the arguments which the jury heard before passing on the credibility of the witnesses.

Despite the reckless allegations directed at the credibility of the witnesses, the record demonstrates that their testimony is, for the most part, uncontradicted and unchallenged. The charges against the witness Lautner are typical of those directed at all the Government witnesses. He is charged with working for a living (App. Br. 69-70); with being a "prolific testifier" (that is with having testified on occasions when called upon to do so) (App. Br. 70-71); and with discussing his testimony with Government attorneys prior to taking the witness stand (App. Br. 71). It is hardly necessary to comment on the fact that these activities were neither improper or illegal.

Peculiarly enough appellants offered no evidence challenging the factual testimony given by Lautner. Despite the fact they had available the transcripts of a number of prior proceedings in which he had testified they were unable to point out a single contradiction. Nor was defense witness Wilkerson, who was present at the 1945 National Convention concerning which Lautner testified at length, able to contradict any of his testimony concerning the proceedings at that Convention.

Finally, appellants challenge Lautner's "expertness" to testify on the subject matter of Marxism-Leninism (App. Br. 71). As in the *Flynn* case, *supra*, Lautner's expert or opinion testimony was limited to his understanding, in connection with the other leaders of the Communist Party with whom he was working, as to the ultimate aim and objective of the C. P. U. S. A. His right to give this

opinion testimony was predicated on his long-time membership in the Party, the positions he held, the schools he attended and in which he taught, as well as on his discussions with the leaders and other members of the C. P. U. S. A. (Tr. 3415-3416; 3434-3446; 3463-3468).[43] However, if there was a question as to his "expertness" on the subject matter of Marxism-Leninism, this was dissipated by his intensive voir dire examination by appellants' counsel (Tr. 2951-3016) which clearly demonstrated his complete mastery of the basic Marxist-Leninist writings.

d. Incitement to Action

Appellants argue that the Government has not proved a conspiracy to teach the proscribed doctrine in the language of incitement (App. Br. pp. 50-57). However the jury was charged on this issue, in substance, as in *Dennis* and *Flynn* and as in those cases, found that the evidence met the test.

Under the law governing the case it is not necessary to prove the appellants conspired to teach and advocate an immediate forcible attempt at overthrowing or destroying the Government. As Chief Justice Vinson pointed out in *Dennis, supra* at pages 509-510

> "In the instant case the trial judge charged the jury that they could not convict unless they found that petitioners intended to overthrow the Government 'as speedily as circumstances would permit'. This does not, and could not properly mean, that they would not strike until there was a certainty of success. What was meant was that the revolutionists would strike when the time was ripe."

[43] See also *Frankfeld* v. *United States*, 198 F. 2d 679, 698 (C. A. 4), certiorari denied 344 U. S. 922 and *Wellman* v. *United States*, 227 F. 2d 757, 769 (C. A. 6).

The burden of Judge Hand's analysis of prior cases in this general field (*Dennis* case *supra* pp. 207-212) was to show that the advocacy of forcible overthrow need not constitute a call for immediate action in order for it to be punishable. Indeed, in formulating his statement of the "clear and present danger" test which was later adopted by the Supreme Court, Judge Hand said at page 212

> "We have purposely substituted 'improbability' for 'remoteness', because that must be the right interpretation. Given the same probability, it would be wholly irrational to condone future evils which we should prevent if they were immediate; that could be reconciled only by an indifference to those who come after us".

Clearly, it is the teaching and advocacy that the Government must be overthrown and destroyed by force and violence when conditions are ripe, in language reasonably calculated to move the Party members to such action, that is sufficient here. This, the evidence proved, and the jury found. The Party members learn immediately that Marxism-Leninism is a science and a guide to action. No Party member could fail to comprehend that he was studying Marxism-Leninism, as enunciated in the "classics" and in the study outlines, as a guide to action which he was expected to take at the propitious moment. When we consider that the Party member is part of a far flung, disciplined organization which concentrates on recruiting members in key basic industries, who can doubt that the member understands that his Marxist-Leninist training has been received in anticipation of the proletarian revolution and not as "a seminar in political theory"?

Contrary to appellants' contentions, the language of the Marxist-Leninist classics is not the sum total of the evi-

dence of incitement in the Government's case. The language contained in the books is meaningless until it is activated as a guide to action. It is not the books that are proscribed but the application of the violent revolutionary tenets that they contain, by these appellants and their co-conspirators. Appellants implied analogy of their teaching and advocacy, to the use of the same books as a source of general literary study in colleges and universities is entirely misplaced. They do not, nor could not point out, by way of example, any college or university that unqualifiedly bases itself upon the principles of Marxism-Leninism as a guide to action as does the C. P. U. S. A.

It is not necessary at this time to restate the evidence which constitutes the requisite incitement to action inasmuch as it has been pointed out in detail heretofore.[44] It is sufficient to point out that the evidence, taken in its entirety, warranted the trial judge in submitting the case to jury who in turn found that there was proof beyond a reasonable doubt of the guilt of the appellants. As the opinion of the Court points out in the *Wellman* case, *supra,* at page 773:

> "Appellants contend that there was no evidence showing that their advocacy partook of the character of incitement. We do not agree. An overall consideration of the activities of the Communist Party and its teachings to its members in secret Party schools strongly supports the reasonable conclusion that the Party was not conducting 'a seminar in political theory' but that the principles of Marxism-Leninism were being taught as a guide to action which was expected to follow at a later propitious time."

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[44] See statement of the case, *supra*, p. 8 et seq. and the summary of evidence as to the intent of the individual appellants, *supra*, pp. 52-65.

It is submitted, therefore, that the trial court had ample evidence before it to submit the case to the jury on this issue, and that the jury had sufficient evidence before it to determine, as they did, that these appellants were engaged in a conspiracy to teach and advocate the forcible overthrow of the Government of the United States through the vehicle of the Communist Party as speedily as circumstances would permit by words reasonably and ordinarily calculated to incite to action.

e. Overt Acts

Appellants while conceding that at least some of the overt acts were proved[45] and that under 18 U. S. C. 371, it is not necessary that an overt act in and of itself be an unlawful or criminal one, nonetheless argue that the overt acts proved by the Government could not be deemed in furtherance of the conspiracy charged in the indictment (App. Br. pp. 47-50). The rationale of appellants' argument is indeed paradoxical. It contains a contradiction in terms when considered in the light of principles applicable

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[45] It is the Government's position that overt acts numbers 1 through 15, as alleged in the indictment, were proved. See *Flynn* at pages 359-360.

> "But even were we to accept the appellants' premise, we think untenable the idea that the usual conspiracy rule applicable to 'a run-of-the-mine conspiracy case'—to use a phrase of the appellants—should not be applied to a conspiracy to teach and advocate the necessity of the violent overthrow of our Government. In the case of so serious a crime as treason. Justice Jackson in *Cramer* v. *United States*, 325 U. S. 1 (1945), took occasion to repudiate the notion that ordinary rules can be made to vary dependent on the gravity of the offense.[3] In the same type of case our concepts do not recognize one kind of law for one case and another kind for another. Indeed, in *Dennis* we applied ordinary conspiracy rules to a Smith Act conspiracy, 183 F. 2d at page 230."

to overt acts. The main thrust of their argument appears to imply that this case is what they refer to as a "First Amendment case" and for that reason the overt acts must be an act which in and of itself contains advocacy of the forceful overthrow of the Government of the United States in words of incitement, that is, a different standard is to be applied to the proof of overt acts in the instant case than in ordinary conspiracy cases.

Without discussing the evidence offered to prove the individual overt acts let it suffice to point out that such a proposition is not a correct statement of the rules of conspiracy law. As pointed out by the Supreme Court in *Braverman* v. *United States*, 317 U. S. 49 at page 53, the overt act, without proof of which a charge of conspiracy cannot be submitted to the jury, may be that of only a single one of the conspirators and need not be itself a crime.

Overt acts must accompany or follow the agreement and must be done in furtherance of the objects of the conspiracy. In *Marino* v. *United States*, 91 F. 2d. 691, 694-695 certiorari denied, 302 U. S. 764, the Court described the legal requirements as follows—

> "The crime is completed when an overt act [to] effect the object of the conspiracy is done by at least one of the conspirators. An overt act is something apart from the conspiracy, and is 'an act to effect the object of the conspiracy' *Joplin Mercantile Co.* v. *United States*, 236 U. S. 531, 535, 35 S. Ct. 291, 293, 59 L.Ed. 705. It need be neither a criminal act, nor the very crime that is the object of the conspiracy. It must however accompany or follow the agreement, and must be done in furtherance of the object of it." (Numerous authorities cited in footnote.)

The object of the present conspiracy is the teaching and advocacy of the duty and necessity of overthrowing the Government of the United States by force and violence. In order to implement this illicit teaching and advocacy, the Communist Party U. S. A. was reconstituted in 1945 as the vehicle of the conspiracy. This was the agreement to which each of these appellants and their co-conspirators became a party during and subsequent to 1945. Everything done thereafter to implement or bring into effectuation the teaching and advocacy of the proscribed doctrine was not only evidence of the unlawful agreement, but constituted acts in its furtherance. In other words, these activities were overt acts directed toward the completion of the crime of conspiracy. The overt acts alleged and proved within the statute of limitations[46] were overt acts which manifested that the conspiracy had not terminated, but was still at work within the statutory period.

The participation of the appellants in the activities alleged and proved as to each overt act are so obviously acts in furtherance of the conspiracy, that they admit of no argument. It is submitted, therefore, that the overt acts were sufficient as being in furtherance of the conspiracy.

f. Clear and Present Danger

In the face of the clear cut findings with regard to the existence of a "clear and present danger" announced by this court as having existed at the time of the *Dennis* indictments; and of its continuation through *Flynn*, appel-

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[46] As appellants concede, many of the overt acts concerned measures taken to conceal their activities, (App. Br. p. 48) the recognized weapon of criminal conspirators. Additionally, as in the case of Overt Act 3 (Tr. 5057), there was evidence of recruitment, an act by its very nature essential to the continuation of the conspiratorial activities.

lants argue, in effect, that the prerequisite conditions for a finding of clear and present danger no longer exist. This, they contend, in the light of the evidence in the instant case which clearly establishes that the conspiracy charged in the present indictment is an uninterrupted continuation of the same conspiracy found to have existed at the time of both *Dennis* and *Flynn*.

Appellants' argument with regard to the existence of a "clear and present danger" can be divided into two general headings. First, whether the teaching and advocacy of appellants and their co-conspirators contemplates or teaches the circumstances in which an attempt at the violent overthrow of the Government of the United States will occur, and (2) was there a probability at the time of the indictment that such circumstances would occur. Mr. Justice Harlan in *Flynn* at page 366, pointed out—

> "The branch of the argument based upon the contentions that Communist doctrine, at least in its more modern manifestations, is non-revolutionary is clearly foreclosed by the jury's verdict. The Court instructed the jury that in order to find a defendant guilty '* * * you must further find that it was the intent of the defendant to achieve this goal of the overthrow or destruction of the Government of the United States by force and violence as speedily as circumstances would permit it to be achieved.' Thus we must take it that the jury found, on adequate evidence, that each convicted defendant intended to attempt the violent overthrow of the Government at the first propitious moment."[47]

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[47] The trial judge in the instant case charged "This third element is the specific intent which the government to convict a defendant must prove that a defendant had while a member of the conspiracy to cause or bring about the overthrow and destruction of the government of the United States by force and violence as speedily as circumstances would permit" (Tr. 8953).

It is submitted, therefore, that the jury verdict in the instant case is dispositive of that part of appellants' argument which concerns itself with the teaching and advocacy of the C. P. U. S. A.

We turn now to the second part of appellants' argument which concerns itself with whether there was a probability at the time of the indictment that circumstances pre-requisite for the forcible overthrow would occur. An analysis of this point must be considered in the light of this court's opinion in *Flynn*. As Judge Harlan pointed out at page 366—

> "The second branch of the argument rests upon a misconception of what this Court and the Supreme Court have held as the meaning of 'clear and present danger' and as to what the lower Court found in that respect. 'Clear and present danger' does not mean, as appellants' argument seems to suggest, that the trial Court must find that the alleged conspirators have agreed upon a precise set of circumstances under which they will attempt to strike down the Government, and, further, the existence of those particular circumstances. In the very nature of things those who advocate the violent overthrow of the Government cannot themselves foresee the future so clearly as to forecast the particular conditions under which it may seem to them propitious to strike at the established authority. Indeed, the appellants themselves argue in connection with their assertion that Communism has cast aside its revolutionary doctrines that the Marxist-Leninist teachings are flexible enough so as to be adaptable to changing sets of circumstances Where a conspiracy to destroy the Government by force or violence is involved, we

> think that the 'clear and present danger' concept, as defined in *Dennis* (183 F. 2d at page 212, 341 U. S. at page 510), connotes no more than that the setting in which the defendants have conspired is such as to lead reasonably to the conclusion that their teachings may result in an attempt at overthrow.
>
> This is the basis on which the trial Judge proceeded, and we think rightly. His finding of a 'clear and present danger' was based not on a determination that Communist doctrine envisaged a particular situation as propitious for an attempt at forceful overthrow of the Government and that such a situation was upon us, but rested rather on the premise, confirmed by the jury's verdict, that the defendant's sought to bring about such overthrow of the Government "as speedily as circumstances will permit", and on a combination of factors from which he estimated the probability of some crisis or extreme tension which might present the awaited opportunity. * * *."

Appellants take the position that the trial judge in the instant case had before him evidence which demonstrates that the utterances[48] of these appellants could not, under existing and foreseeable circumstances, have created the danger of an attempt to overthrow the Government by violence (App. Br. page 100). While we do not concede

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[48] Of course it is not the utterances of the appellants in and of themselves that constitute the "clear and present danger" but, as Chief Justice Vinson pointed out in *Dennis* at pp. 510-511, "The formation by petitioners of such a highly organized conspiracy, with the rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of world conditions, similar uprisings in other countries, and the touch and go nature of our relations with countries with whom petitioners were in the very least ideologically attuned, convince us that their convictions were justified on this score."

that the affidavits filed by the appellants, were competent evidence, the fact remains that their contents were available to the trial judge for his consideration in connection with his judicial findings on the question of "clear and present danger". Thus the appellants cannot complain that they did not have a full and complete opportunity to be heard on the question of "clear and present danger".

The trial judge filed a memorandum containing his finding that the "clear and present danger" found to have existed at the time of *Dennis* and *Flynn* continued in existence as of March 4, 1955, the date of the filing of the indictment in the instant case.[49] In the memorandum he incorporated the reasoning on which he based this finding. It is therefore, unnecessary to discuss the factors that support the correctness of this finding. This court, as was the trial judge, is familiar with the precarious state of world conditions which continues to threaten the peace and security of the United States.[50] That this court, as did the trial court, can and should take judicial notice of these conditions is so well settled as to require no further comment.

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[49] See Appendix 2 Trial Court's "Finding on Issue of Clear and Present Danger" filed March 24, 1956.

[50] In contrast to the naive statements contained in appellants' brief that the relations between the United States and Communist countries in 1955 could no longer be properly described as "touch and go" and "inflammable" (App. Br. pp. 117-119), the sad and critical events of recent weeks only serve to illustrate the correctness of the trial judge's finding. The weeks of horror inflicted on the people of Hungary by the Soviet Armies, as well as the threat of armed intervention by the Soviet Union in Syria and the Suez Canal crisis, are but further manifestations of the fact "that there has been no substantial change in the basic positions of the Free and Communist worlds".

II

The Trial Court did not err in the admission of evidence.

A. Testimony of the Witness John Lautner.

Appellants contend that the trial court improperly admitted certain items of evidence offered through the witness Lautner. The evidence complained of, consists of five specific items (App. Br. pp. 128-131).

In view of the assiduous care exercised by the trial judge, throughout the case, to protect the rights of these appellants, it is difficult to believe that they seriously urge the citations of error set forth in this section of their brief. Considered in the light of the entire case, there can be no doubt but that this evidence was properly admitted.

This court pointed out in *Dennis* at page 231 that it is the duty of the trial court to decide any preliminary issue of fact on which the competency of evidence depends. The propriety of the trial judge's ruling in the instant case is clearly supported by the accepted principles of conspiracy law as set forth in numerous decisions. Conspiracy is a partnership in criminal purposes and the declarations of a co-conspirator in furtherance of the conspiracy are admissible against all of the conspirators. *United States* v. *Gypsum Co.*, 333 U. S. 364, 393; *Agnello* v. *United States*, 269 U. S. 20; *Hitchman Coal and Coke Co* v. *Mitchell*, 245 U. S. 229, 249; *United States* v. *Peoni*, 100 F. 2d 401 (C. A. 2). Declarations of a co-conspirator are admissible even though the conspirator is not joined as a defendant or is unnamed. *Clune* v. *United States*, 159 U S. 590; *Prichard* v. *United States*, 181 F. 2d 326 (C. A. 6), affirmed

339 U. S. 974; *United States* v. *Stein*, 50 F. 2d 1025 (C. A. 2) certiorari denied 284 U. S. 671; *Allen* v. *United States*, 4 F. 2d 688 (C. A. 7) certiorari denied *sub nom. Hunter* v. *United States*, 267 U. S. 597. Moreover, it is unnecessary for the jury to find that the individual defendant was a party to the original agreement. If he joins the conspiracy later, he becomes equally liable with the original conspirators, *United States* v. *Gypsum, supra; United States* v. *Buckner*, 108 F. 2d 921 (C. A. 2) certiorari denied 309 U. S. 669. As was pointed out in *Coates* v. *United States*, 59 F. 2d 173, 174 (C. A. 9):

> "It is immaterial when any of the parties entered the polluted stream. From the moment he entered he is as much contaminated and held as though an original conspirator."

It is unnecessary to show that the conspirator knew the full scope of the conspiracy or participated in carrying out each detail. He need not be acquainted with each of his co-conspirators or know the exact part played by each of them. *Blumenthal* v. *United States, supra; United States* v. *Manton*, 107 F. 2d 834 (C. A. 2) certiorari denied 309 U. S. 664. It is also immaterial that some of the conspirators are wholly or partly strangers to each other, when the proof shows that all are engaged in a common unlawful purpose, and each contributed his part to the furtherance of the conspiracy. *Jezewski* v. *United States*, 13 F. 2d 599, 602 (C. A. 6), certiorari denied 273 U. S. 735; *Poliafico* v. *United States*, 237 F. 2d 97 (C. A. 6). See also *Wellman* v. *United States, supra*, at page 768.

We turn now to a brief discussion of Lautner's testimony concerning which appellants complain:

(a) As to the statements made by the co-conspirator Dennis at the 1945 National Convention there can be no

question. Dennis was named a co-conspirator in the instant case. The appellants concede that Dennis is an authoritative spokesman for the Communist Party of the United States of America and in fact introduced written statements prepared by him as part of their case (Def. Ex. O. Tr. 7765). Thus the statements made by Dennis were authoritative statements made by a co-conspirator in furtherance of the conspiracy. That the evidence did not establish that any of the appellants were present is of no moment in the light of the established principle of conspiracy law cited heretofore.

(b) The chart illustrating the organizational structure of the Communist Party (Gov't. Ex. 34) was admissible on at least two grounds. It was a graphic representation of the Communist Party organization which included the Communist Party of Connecticut, as evidenced by the testimony of practically every witness; secondly, it was a replica of a chart used by Lautner in official Communist Party classes. It is significant also that appellants have not challenged its accuracy in any respect. Contrary to appellants' contention, the evidence in the case clearly establishes that each of these appellants were intimately connected with the Communist Party structure as described by Lautner and represented on the chart.

(c) and (d) Lautner's testimony with regard to the secret meetings held at his apartment in New York City during 1948 was properly admitted. It established the fact of the organization of the underground apparatus and the institution of security measures within the Party which, the evidence establishes, became part and parcel of the modus operandi of the Communist Party of Connecticut. Furthermore the indictment in the instant case alleges that the conspiracy existed not only in Connecticut but "elsewhere" as well. Certainly evidence as to the conspiratorial activities of these appellants and their

co-conspirators is admissible irrespective of where it took place, if it was in furtherance of the conspiracy charged in the indictment.

(e) The evidence with reference to the classes conducted by Lautner in 1947 and 1948 was properly admissible as bearing on his qualifications to give opinion testimony as well as evidence of the overall objectives of the conspiracy.[51]

B. Declarations of Co-Conspirators.

Appellants argue that certain statements made at Communist Party meetings and classes and which were admitted as declarations of co-conspirators in furtherance of the conspiracy should not have been admitted. It is their contention that the persons who made these statements were not shown to be in any position of leadership in the Party (App. Br. pp. 132-137).

This court has on many occasions discussed the criteria for ascertaining the admissibility of declarations made by persons charged with participation in a criminal enterprise. In the *Dennis* case *supra* Judge Hand stated at page 230:

"In this circuit we have repeatedly stated that such

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[51] In *United States* v. *Mesarosh*, 223 F. 2d 449 (C. A. 3), reversed on other grounds 352 U. S. —, the court stated:

> "But the hierarchial rung upon which a conspirator perches is not relevant because it is the existence and nature of the conspiracy which gives rise to the danger. The activities of the ringleaders constitute a clear and present danger because the tentacles of their authority reach into all parts of the country to give direction to their subordinates, without whom the leaders would probably be helpless. In effect, the larger the conspiracy, the more likely and the more imminent the danger, and all members of that group possessing the necessary intent are equally guilty."

declarations are competent against the accused in a prosecution for conspiracy, or for any other concerted venture, when, but only when, they are made in execution of an enterprise—'a partnership in crime'—to which the accused and the declarant are both parties, and that the enterprise must itself comprise making some such declaration as a step in its realization."

After a resume of the positions held in the Communist Party of the United States of America by the defendants in *Dennis*, Judge Hand continued:

"All had been affiliated with the Party in other capacities for many years; some had even been to Moscow to absorb the teachings of the Russian Party. Obviously, no reasonable person can doubt that they were aware of the teachings and advocacies which are spread throughout the autnoritative texts, and that these were used to indoctrinate pupils. A colloquy which arose in a class between a teacher and a pupil, or the address of a speaker at a public meeting of the Party, were therefore declarations made in execution of the common enterprise and they fell directly within the general rule and were plainly competent. This accounts for all the declarations cited in the brief which were admitted, except that of Mrs. Cane, to whom the informer, Hidalgo, was referred when he wished to joint the Party. Since she was a member of the executive of a club in New York, it was reasonable to infer, both that she was acquainted with the Party doctrines, and that what she said was in execution of the Party purposes; and therefore her declarations constitute no exception to the rule."

It requires but a cursory examination of the record to determine that in each of the four examples pointed out by appellants, the foundation for the admissibility of

the statements were in accordance with the criterion laid down in *Dennis*. Each of the speakers held a higher position in the Party than did Mrs. Cane in *Dennis*.[52] Each of the statements were made at official Party meetings by persons in a position to know the objectives of the conspiracy. These appellants were not inactive bystanders, as the argument would seem to imply, but full fledged participants in every phase of the conspiracy, and as such shared the responsibility for all acts and statements shown to be in furtherance of the conspiracy. Appellants use of such phrases as "common membership in an unincorporated association" (App. Br. p. 135) and "guilt by association" (App. Br. p. 136) are meaningless in the light of the evidence in the instant case which has established the appellants' complete and active support of the conspiracy.

C. Opinion Testimony.

Appellants allege error in that the witness Lautner was permitted to testify concerning the meaning of Marxism-Leninism and as to the aims and objectives of the Communist Party of the United States of America.

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[52] (a) In 1949 Lucille Bilotti was Secretary to the State Youth Commission of the Communist Party of Connecticut (Tr. 5586) and represented the Communist Party at the National Conference of the Labor Youth League (Tr. 5586-5587).

(b) Joe Holden was a member of the Negro Commission of the Communist Party of Connecticut (Tr. 5175; 5408) and attended other Communist Party meetings as well (Tr. 6306-6312; 6312-14).

(c) Priscilla Small was Chairman of the Youth Branch of the Communist Party in 1949, and a member of the Executive Board of the Youth Branch of the Communist Party of New Haven (Tr. 5580).

(d) Louise Margolin was chairman of the Hill Club and a member of the New Haven County Section Committee of the Communist Party of Connecticut (Tr. 5661-5664).

In *Dennis* this court, in discussing the admissibility of the expert testimony of Budenz which was in substance similar to Lautner's testimony in the instant case, stated at page 229:

> "He was as well qualified *as an expert* to know what that meaning was as anyone could be; and we cannot see any more reason to exclude his testimony than to exclude the evidence of any other part of the mutual understandings of the defendants. As for the rule against conclusions, it is at most only one of convenience, and in this case every consideration of convenience made against its imposition." (Emphasis supplied.)

In *Flynn* both Budenz and Lautner were witnesses but this court found it unnecessary to deal again with the admissibility of their expert and opinion testimony. However, in the *Frankfeld* case, *supra*, Judge Parker, who wrote the opinion, stated, with reference to Lautner's testimony, at page 689:

> "It is difficult to see, however, how better evidence of the teachings and purposes of a party could be obtained than from the testimony of those who heard and participated in the teachings sponsored by the party.
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> • • • •
>
> "Where the matter under inquiry is properly the subject of expert testimony, it is no objection that the opinion sought to be elicited is upon the issue to be decided. [Citing cases.]
>
> There was no invasion whatever of the province of the jury. They were allowed to consider the expert testimony along with the documentary and factual evidence upon which it was based and all other evidence in the case in arriving at a verdict. See *United*

States v. *Johnson*, 319 U. S. 503, 519, 63 S. Ct. 1233, 87 L. Ed. 1546."

See also *Wellman* v. *United States*, 227 F. 2d 757, 769 (C. A. 6).

The remainder of appellants' argument is directed toward matters pertaining to the credibility of the witness. The fact that Lautner had testified in a number of prior proceedings and that he has received his principal income from the Department of Justice for the past few years, were matters to be considered by the jury, for whatever significance they might wish to give them, in considering his credibility as a witness. The verdict in the instant case, as well as in the prior cases in which he has testified, is ample refutation of appellants' arguments as to his credibility.

III

The appellants have no constitutional right to waive trial by jury without the consent of the Government and the approval of the Court.

On September 22, 1955, appellants through their attorneys, filed with the Court a motion for leave to be tried by the Court rather than by jury. On September 27, 1955, the Government, after due consideration, refused to consent to a waiver of trial by jury.

On October 3, 1955, Judge Anderson, relying on Rule 23(a), Federal Rules of Criminal Procedure, which conditions the power of defendants to waive a jury trial in a criminal case upon consent of the Government and approval of the Court,[53] denied defendant's motion in a

[53] Rule 23(a) makes the following provision: "Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial in writing with the approval of the Court and the consent of the Government."

Memorandum of Decision dated October 3, 1955. Thereupon a jury was properly[54] impaneled, the case was tried, and a verdict of guilty returned against appellants.

Appellants contend that Rule 23(a) is unconstitutional on its face and as applied for the following reasons:

> (a) The Rule violates the Fifth and Sixth Amendments which guarantee an accused the right to elect intelligently to waive a jury trial when he deems such action necessary to obtain a fair and impartial trial (App. Br. 146).
>
> (b) The Rule vests in the Government of the United States the right to a jury trial in violation of established usage, the Sixth Amendment, and the due process provisions of the Fifth Amendment (App. Br. 156).

While Article III, Section 2, Clause 3, of the United States Constitution and the Sixth Amendment guarantee an accused the right to trial by jury in a criminal case, there is nothing in the Constitution or laws of the United States which grants to an accused person the right to waive a trial by jury.

Rule 23(a) codifies a practice which has existed in the Federal Courts for many years and which received the sanction of the Supreme Court in 1930. See 4 Barron, *Federal Practice and Procedure* 160, §2122. See also *Patton* v. *United States*, 281 U. S. 276.

It was not until the decision in the *Patton* case that it

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[54] Rule 24(a) of the Federal Rules of Criminal Procedure permits the Court to conduct the examination of jurors on the voir dire. This Court has recently reaffirmed the proposition that the supervision of the voir dire is within the discretion of the trial judge. *United States* v. *Lebron et al.*, 222 F. 2d 531, 538 (C. A. 2, 1955).

was finally determined that the right to a trial by jury could be waived. In the *Patton* case, the Supreme Court held that the provisions of Article III, §2, cl. 3 of the Constitution of the United States providing that "The trial of all crimes * * * shall be by jury" did not constitute a mandatory requirement which could not be waived. The Court further held that, construing Article III, §2, cl. 3, *in pari materia* with the Sixth Amendment, trial by jury was not established as a part of the frame of Government; that the District Courts had jurisdiction to try a criminal case without a jury; that there was nothing in the theory of public policy which denied to an accused the *power* to waive trial by jury and that this power extended to felonies as well as misdemeanors.

It is true that the *Patton* case involved a situation where the trial was continued with eleven jurors after one of the jurors had become incapacitated, but the Court rejected the distinction sought to be made between the complete waiver of a jury and the consent to be tried by less than 12 jurors. In substance the *Patton* case affirmed the *power* of a defendant in a criminal case to waive his constitutional *right* to be tried by a jury.

Although the *Patton* decision spoke of the power of an accused to waive a trial by jury as a privilege, it did not state that this privilege was an absolute one. On the contrary, at pages 312 and 313, the Court said:

> "In affirming the power of the defendant in any criminal case to waive a trial by a constitutional jury and submit to trial by * * * the court, *we do not mean to hold that the waiver must be put into effect at all events. That perhaps sufficiently appears already.* Trial by jury is the normal and, with oc-

casional exceptions, the preferable mode of disposing of issues of fact in criminal cases above the grade of petty offenses. In such cases the value and appropriateness of jury trial have been established by long experience, and are not now to be denied. *Not only must the right of the accused to a trial by a constitutional jury be jealously preserved, but the maintenance of the jury as a fact finding body in criminal cases is of such importance and has such a place in our traditions, that, before any waiver can become effective, the consent of government counsel and the sanction of the court must be had, in addition to the express and intelligent consent of the defendant.*" (Emphasis supplied.)

In sanctioning what to many courts had seemed an impairment of a constitutional right which had been jealously guarded through centuries of Anglo-Saxon jurisprudence, the Supreme Court appropriately defined and delimited within precise bounds the conditions and circumstances under which trial by jury could be dispensed with.

This rule has been reaffirmed in more recent years by several Circuit Courts of Appeal. In a case before this Court, *United States* v. *Dubrin*, 93 F. 2d 499, cert. denied, 303 U. S. 646, the defendant sought to waive a jury trial, but the prosecution refused to consent thereto. The trial court thereupon refused to try the case without a jury. Judge Augustus N. Hand held that this refusal did not constitute error, in view of the "explicit announcement" in the *Patton* case to the effect that consent of the Government is required in order to permit the defendants to waive a trial by jury. See also, *Rees* v. *United States*, 95 F. 2d 784, at 790 (C. A. 4); *C. I. T. Corp. et al.* v *United States*, 150 F. 2d 85, at 91 (C. A. 9); and *Irvin* v. *Zerbst*, 97 F. 2d 257, 258 (C. A. 5), certiorari denied, 305 U. S. 597.

The cases relied upon by appellants do not announce a rule contrary to that applied in the above cases, but are all based upon the waiver of a separate and distinct right not involved herein (See App. Br. 151-152), and as a result have no application to the instant case. Further, appellants cite no authority in support of their position that Rule 23(a) is unconstitutional either on its face or as applied in this case. Indeed, they cannot, for there is none. All of the Court decisions are to the contrary.

In addition, the appellants erroneously report the case of *Adams* v. *United States ex rel. McCann*, 317 U. S. 269 (App. Br. 150) as holding that the accused may waive a trial by jury without the consent of the Government, when in the *Adams* case the prosecution had in fact consented to the waiver. In referring to the *Patton* case the Supreme Court at page 277 said:

> "We have already held that one charged with a serious Federal crime may dispense with his constitutional right to jury trial, where this action is taken with his express intelligent consent, where the *Government also consents* and where such action is approved by the responsible judgment of the trial court." (Emphasis supplied.)

Nowhere in the *Adams* opinion did the Court consider or discuss the question of refusal by the prosecution to consent to a waiver, and the consequent refusal of a court to try a case without a jury. We submit, therefore, that there is nothing in that case to warrant the conclusion that the *Patton* rule, relating to consent by the prosecution, has been overruled or disapproved by the Supreme Court.

In any event, even if we assume, *arguendo*, that the trial court's refusal to try the case without a jury was

error, no prejudice resulted which would warrant reversal of the conviction. There being no prejudice, this Court should disregard the error.[55]

At the outset of their discussion of the question of prejudice (App. Br. 141) appellants alleged that "even the court had difficulty persuading most of them (the veniremen) that they were not and should not be prejudiced." Even the cold record of this trial, which cannot reflect the calm, dispassionate and painstaking manner in which the learned trial judge went about his task of securing a jury, is witness to the falsity of this statement. Not only were the questions asked the individual jurors by the Court on the voir dire carefully designed to bring about the exclusion of jurors unable to judge the case impartially, but the Court permitted unlimited submission of questions by counsel. When the Court "had to depart from prepared questioning" (App. Br. 143) this usually occurred as a result of questions propounded to the venireman through the Court by appellants' counsel.

In an attempt to demonstrate that the trial judge "persuaded" jurors who were affected by bias that they were not so affected, appellants have set forth certain questions and answers from the voir dire examination of Mrs. Grace L. Colberg, Juror No. 4 (App. Br. 142-143). The inferences appellants attempt to draw with regard to the alleged bias of Mrs. Colberg are not borne out by her entire voir dire examination (Appendix III, Entire Voir Dire Examination of Mrs. Colberg). However, we need only point out her unequivocal answers at

[55] Rule 52(a) of the Federal Rules of Criminal Procedure states: "Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."

pages 510-511 of the record to clearly demonstrate that she approached the case with a fair and open mind. The same is true of Jurors Finn, Hotchkiss, Terrell and Kain who are also listed by appellants as persons who were influenced by the "persuasion" of the trial judge.

Putting aside for a moment the question of whether or not these five jurors were in fact biased, the trial judge, who had the veniremen before him and was able to judge them with a far more dispassionate eye than any of the parties, felt them to be qualified jurors who would render their verdict based not upon any preconceived notions of their own, but solely upon the evidence presented. If either the Government or the appellants felt that, for one reason or another, a particular juror should not sit, a remedy by way of peremptory challenge was always available to them. The Court allowed the appellants sixteen peremptory challenges to the panel of twelve,[56] which were not exhausted by the appellants. At the time the twelfth juror was seated two peremptory challenges remained unused,[57] the appellants accepting the panel as seated. Even more compelling, however, is the fact that when Mrs. Colberg was seated as Juror No. 4, appellants' prime example of a biased juror could (App. Br. 142) have been challenged peremptorily, since at the time of her selection nine challenges remained unexercised. At the time of the seating of jurors Finn,

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[56] Under Rule 24(b) of the Federal Rules of Criminal Procedure appellants were entitled to ten peremptory challenges but the court, in the exercise of its discretion, granted them six additional challenges.

[57] By failing to exercise their peremptory challenges, the appellants have, it seems, waived any right they might otherwise have to contend that the court erred in seating a particular juror. *Holt* v. *State*, 121 S. W. 1072, 1073; *Shoop* v. *State*, 190 S. W. 2d 988, 989. See also *Ex Parte: Spies*, 123 U. S. 131; 31 *Am. Jur.* 646 (*Jury*, Section 118).

Hotchkiss, Terrell and Kain,[58] there were respectively 15, 13, 8 and 6 peremptory challenges remaining for the use of the appellants.

Even if no peremptory challenges remained for the use of the appellants at the time the five above-mentioned jurors were seated, the Court, under Rule 24(b) of the Federal Rules of Criminal Procedure, has power in its discretion to grant additional peremptory challenges in cases involving more than one defendant.

> "The principal reason for granting additional peremptory challenges is to assist in the selection of a fair and impartial jury, and this power and discretion of the Court carries on until such time as the trial jury is selected to hear the case." *United States* v. *Fujimoto et al.*, 107 F. Supp. 865 (D. C. D. Hawaii 1952).

As stated before, not only did appellants fail to exercise the sixteen peremptory challenges afforded them, but they did not request additional challenges. Rather when the panel of twelve was seated they stood mute, raising no objection to the panel as constituted.

It hardly need be mentioned that, had counsel exhausted their peremptory challenges, the trial judge, at all times extremely zealous to afford appellants every means possible to obtain a fair and impartial jury, would have provided them with the additional challenge or challenges deemed necessary by counsel to protect their clients. Indeed, any failure on the part of the Court to

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[58] At page 143 of their brief appellants use these jurors as examples of instances wherein the Court "persuaded" jurors that they were unbiased.

so provide might well have constituted an abuse of discretion and consequent reversible error.

The exhaustive voir dire examination conducted by the Court covered 1,387 pages of the transcript of the trial and ten Court days. The content of the questions asked the veniremen, the number excused by the Court for cause and the acceptanace of the panel by counsel, considered together with the long deliberation which took place before the jury returned its verdict, disprove with finality appellants' contention that a verdict of guilty was returned by a jury which was motivated by bias and prejudice directed against them, rather than one which decided the case solely on the evidence presented.

Trial by jury has always been, and still is, generally regarded as the normal and preferable mode of disposing of issues of fact in civil cases at law, as well as in criminal cases. *Dimick* v. *Schiedt,* 293 U. S. 474, 485-486. As pointed out by the Circuit Court of Appeals for the Fourth Circuit in the *Rees* case, *supra* at page 790:

> "It cannot be conceived how a trial by a jury, presided over by a judge, could possibly be prejudicial to an accused. It is not only the province but the duty of the judge to pass upon the verdict of the jury and the sufficiency of the evidence to support the verdict. Under these fundamental and elementary principles, invariably governing the administration of criminal law in our courts, the accused, when tried by a jury, has every advantage he could possibly have in a trial before a judge alone. In effect he has trial by the judge in addition to the trial by the jury."

Appellants also contend that failure on the part of Government counsel to give a reason for declining to

acquiesce in appellants' request to waive a trial by jury makes it apparent that the United States Attorneys were "unconcerned with giving the appellants the fairest possible trial, but sought to obtain the trial most likely to convict" (App. Br. 146); basing this fallacious assumption on an unfounded theory that "a conviction in this type of case is more readily obtainable from a jury than a court" (Ibid.) Needless to say, such statements by counsel for the appellants find no support in the record.

Appellants' argument on this question, accusing the Government attorneys of subverting justice (App. Br. 162), and generally questioning the motives of the Government in refusing its consent to a waiver of jury trial (App. Br. 146, 161) in no way aids this Court in considering the legal questions involved, but rather serves only as an attempt to submerge the issues. The many reasons which compelled the United States to invoke certain provisions of Rule 23(a) need not be repeated here. Judge Anderson recognized certain of them in his Memorandum of Decision on this question, *supra*. He did not find it necessary, while sustaining the Government's position, to question its motives; indeed, he fully recognized the reasons for the Government's considered judgment in this matter:

> "In the present case, the Goverment gives as its reason for withholding consent that trial by jury is the normal and accepted method to be used in disposing of serious criminal cases, and that considering the nature of the charge, it is the more appropriate means of placing these accused, to use an ancient phrase, 'on their country for trial.' It might also be urged that these defendants represented by court-appointed counsel might, in the event of their conviction by the Court, make the claim that the court-appointed Counsel in the interest of shortening the

trial had persuaded them to waive their constitutional right to a trial by jury—thus raising an issue which the Government feels now may be prevented by insisting on a jury trial."[59]

In its memorandum the Court went on to say:

"Much of the language of the Patton case and in the latter case of *Adams* v. *United States* 317 U. S. 269 support the defendants' very compelling argument that the election of trial by jury or by the court alone should rest with an accused. At present, however, we are concerned not only with the construction of these cases but with a rule having the force of a statute. *I am not persuaded that it is unconstitutional.* The main provision of the rule requires the consent of the Government before a waiver of jury trial by the defendants can become effective. *It is not necessary to discuss any reasons which might be advanced by the Government in support of its position. The requirement is unconditional and this court is bound by it. United States* v. *Dubrin*, 93 F. 2d 499 at 505". (Emphasis supplied.)

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[59] It should be noted in this connection that appellants' motion to waive jury trial was filed on September 22, 1955. The Court had appointed counsel on September 7 and September 15, 1955. Prior to the filing of this motion appellants gave no indication that they were becoming disenchanted with the prospect of a jury trial. In fact, they had succeeded in securing the dismissal of a previous indictment returned against them on the grounds that the jury array had been improperly constituted. This had resulted in the establishment of a new system for empanelling juries in New Haven. See Judge Anderson's Memorandum of Decision on Motions Directed Against the Indictment dated July 2, 1955.

Further, at the time the motion was filed, the Clerk had already summoned 150 veniremen as potential jurors. The case was, at that time, assigned for trial in September.

Neither the historical background of the Constitution nor Colonial History, as defendants contend (App. Br. 153), indicate that the determination whether there shall be a trial by a jury or by the court was one within the exclusive province of the accused. On the contrary, the following excerpts from early Colonial laws support the view that the mutual consent of both parties was necessary to make a waiver of a trial by jury effective.

Thus, Libertie XXIX of the "Body of Liberties" of 1641,[60] printed in the Colonial Laws of Massachusetts, 29-61, 39 reads as follows:

> "In all actions at law it shall be the libertie of the plaintife and defendant *by mutual consent* to choose whether they will be tryed by the Bench or by a Jurie, unlesse it be where the law upon just reason hath otherwise determined. *The like libertie shall be granted to all persons in criminall cases:*" (Emphasis supplied.)

In New Hampshire by the Cutt Laws of 1679 (I. N. H. Province Laws 25) it was provided:

> "It is further enacted: That all trials whether capital or criminal, or between man & man, both representing maritime affairs as well as others, be tried by a jury of Twelv good & Lawful men according to the commendable custom of England; Except the parties concerned do refer it to the Bench: * * *"

In view of the foregoing cases and the explicit language contained in Rule 23(a), Federal Rules of Criminal Procedure, the Government submits that the defendants have no right, constitutional or otherwise, to demand and receive a non-jury trial without the consent of the Government and approval of the Court.

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[60] This was the first document resembling a Constitution in Massachusetts.

IV

The enactment of the Communist Control Act of 1954 does not deprive appellants of a fair and impartial trial, nor does that Act repeal or amend the Smith Act.

Appellants contend (App. Br. 163) that since the Congress of the United States has determined legislatively, in Section 2 of the Communist Control Act of 1954 (50 U. S. C. 841), that the Communist Party does in fact advocate the overthrow of the Government by force and violence, the Act converts the Smith Act into a bill of attainder and, deprives the appellants of the possibility of a fair trial in violation of the due process clause of the Fifth Amendment. The Government submits that both contentions are untenable.

A. The Communist Control Act of 1954 Contains Nothing on Its Face Which Repeals or Amends the Smith Act.

The Communist Control Act on its face is "An Act to outlaw the Communist Party, to prohibit members of Communist organizations from serving in certain representative capacities, and for other purposes."

Nowhere, in the eleven long and detailed sections of the Control Act, is there any reference to the Smith Act, nor is there any statement made therein which might reasonably be construed to indicate an intent on the part of Congress that the Control Act repeal, amend, or supplement the Smith Act. On the contrary, the Control Act contains specific language with reference to the Internal Security Act of 1950, and if it had been the

intent of the Congress to repeal, amend or supplement the Smith Act similar language with reference to the Smith Act would have been included in the Control Act. The Control Act is primarily a registration act with no criminal penalties as such. There are, of course, sanctions which may be imposed for failure to conform with the provisions of the Act, but these are to be made only after an appropriate determination has been made that a particular organization comes within the purview of the Act. The Act itself operates only to implement the rationale and basis of the Internal Security Act. In all of the eleven sections of the Control Act there are nine references to the Internal Security Act, not including sections 10 and 11, which are direct amendments to the Internal Security Act. (See U. S. Code, Congressional and Administrative News, No. 18, 1954 at page 7227 for a chart of these references in the United States Code.)

It is obvious, therefore, that the Control Act contains nothing on its face which either amends, repeals or even refers to the Smith Act.

While keeping this fact in mind, it would be fruitful at this point to review briefly the legislative history of the Control Act.

When the Senate bill, which later, with changes, became the Communist Control Act of 1954, was originally reported out from the Committee on the Judiciary, as Bill No. S.3706, on July 6, 1954, it was reported as a bill to amend the Subversive Activities Act (Internal Security, Chapter 23, Title 50 U. S. C.). It contained no reference to the Smith Act. It likewise contained no reference to that Act in any of the provisions which later became Sections 2, 3, 4, and 5 of the the Control Act.

On August 16, 1954, there were offered several bills to take the place of S.3706. One such bill entitled "An Act to Outlaw the Communist Party" was ordered to be printed together with the amendments thereto submitted by the House of Representatives. Provisions similar to Sections 2, 3, 4, and 5 of the present Act were added. Some of the offered bills, specifically one submitted by Senator Humphrey of Minnesota, provided that membership in the Communist Party, *per se*, would be a criminal offense. All of these bills were rejected.

The Senate did not wish to enact legislation making membership *per se* a crime, nor did it wish in any manner to enact legislation which would impede the enforcement of the Smith Act. The language of the bill, finally enacted as the Communist Control Act, contains findings of fact which serve to show the rationale of the statute itself. These findings are *sui generis* to the Control Act itself. This is obvious from the language of Section 2 of the Act which relates to outlawing the Communist Party. The description of the activities of the Party found therein is similar to the description of the Party found in the first section of the Subversive Activities Act of 1950 (See Section 781, Title 50, U. S. C.), against which, it might be pointed out, the appellants make no complaint.

During the Senate debates relative to this bill, Senator John Marshall Butler of Maryland, of the Senate Judiciary Committee, explained to members of that Committee that the bill as finally voted out would not do two things: (a) it would not seek to actually outlaw the Communist Party, and (b) it would not interfere with the operation and prosecution of the Smith Act. See *Congressional Record*,

Vol. 100, No. 162, August 19, 1954, pp. 14392-14399.[61] Senator Humphrey, on page 14394 of the Record, in conceding defeat of his efforts to cause the proposed bill to outlaw the Communist Party and to cause it to be an amendment to the Smith Act rather than the Internal Security Act, stated:

> "Maybe we did not strike as strong a blow as Hubert Humphrey would have liked to strike in the bill, but we have not injured the laws which are now on the books."

and later on page 14399:

> "So, Mr. President, on the basis that the Conference report is better and that one section of it might do some good in being a declaration that the Communist Party is an international conspiracy, I expect to vote for the report."

Senator Kefauver of Tennessee, whose question had been the basis for most of the debate, as to the effect of the new bill on the operation of the Smith Act, and who had been instrumental in the defeat of the Humphrey version, stated on page 14395:

> "On the basis that it is a better piece of legislation and an improvement, and on the basis that it does substantially take away the provisions of the Humphrey amendment, I shall vote for the Conference report. * * *
>
> I have now been assured that this will not adversely affect prosecution under the Smith Act or emasculate the Internal Security Act, so my principal objections have been met."

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[61] On page 14393 Senator Butler said that, "[t]he purpose of this amendment is to integrate this act into the Internal Security Act, and to make all of it a workable whole."

Therefore, the Government feels that, to assume, as have the appellants herein, that the Communist Control Act of 1954 was intended to amend or supplement the Smith Act is to make an assumption which runs counter to the express concern of Congress that the very thing suggested by the appellants should not happen. The legislative history of the Act, the alterations made in the bill by the Conference Committee, and the provisions of the act itself as finally passed show no intention to repeal or amend the Smith Act. Contrary to the position taken by appellants (App. Br. p. 165) the courts have consistently held that individual expressions of opinion, voiced by legislators during debates on proposed legislation, carry little weight when they are contrary to the clear legislative intent as reflected in the entire legislative history. In *United States* v. *Kung Chen Fur Corp.*, 188 F. 2d 577, 584 (U. S. C. C. P. A.), the court quoting from *Aldridge* v. *Williams*, 3 How. 9, 44 U. S. 9, stated:

> "* * * the judgment of the court cannot, in any degree, be influenced by the construction placed upon it [the statute] by individual members of Congress in the debate which took place on its passage, nor by the motives or reasons assigned by them for supporting or opposing amendments that were offered. The law as it passed is the will of the majority of both houses, and the only mode in which will is spoken is in the act itself, and we must gather their intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject, and looking, if necessary to the public history of the times in which it was passed."

B. The Communist Control Act of 1954 Does Not Amend the Smith Act by Implication.

The law is well established that the courts do not favor implied amendments of statutes. This point has been before the courts on numerous occasions. In the case of *United States* v. *24 Cans Containing Butter*, 148 F. 2d 365 (C. A. 5), certiorari denied 326 U. S. 752, the court stated at page 367:

> "Implied repeal or limitation of one act by another is never favored. It is not for the courts, unless the conflict between two acts is inescapable and compelling, to exclude from the coverage of an act matters which its terms expressly include, on the theory that another act whose general purpose seems inconsistent has impliedly repealed or limited the act under review. Only where it is found that it is not possible for both acts to co-exist can an act be held to repeal, or limit another, and then only in respect to the precise point of conflict."

More recently in an Illinois case, *Swettman* v. *Remington Rand*, 65 F. Supp. 940 (D. C. Ill.), Judge Briggle stated at page 942:

> "• • • Implied amendments or repeals are not favored by the law and such an interpretation should not be given to the Act unless the intention to do so clearly appears."

In the case of *Rosenberg* v. *United States*, 346 U. S. 273, a somewhat analogous situation was presented to the United States Supreme Court. The question under consideration was whether the Atomic Energy Act of 1946

superseded the earlier Espionage Act. Mr. Justice Clark, in his concurring opinion, stated at page 294:

> "Where Congress by more than one statute proscribes a private course of conduct, the Government may choose to invoke either applicable law: 'At least where different proof is required for each offense, a single act or transaction may violate more than one criminal statute.' *United States* v. *Beacon Brass Co.*, 344 U. S. 43, 45. See also *United States* v. *Noveck*, 273 U. S. 202, 206; *Gavieres* v. *United States*, 220 U. S. 338. Nor does the partial overlap of two statutes necessarily work a *pro tanto* repealer of the earlier act. *Ibid.* It is a cardinal principle of construction that repeals by implication are not favored. When there are two acts on the same subject, the rule is to give effect to both if possible . . . 'the intention of the legislature to repeal must be clear and manifest' . . . It is not sufficient . . . to establish that subsequent laws cover some or even all of the cases provided for by the (prior act); for they may be merely affirmative, or cumulative, or auxiliary. There must be a 'positive repugnancy between the provisions of the new law, and those of the old.' *United States* v. *Borden Co.*, 308, U. S. 188, 198."

A fortiori the rationale of the Supreme Court in *Rosenberg* is controlling here by reason of the fact that there is no overlapping or conflict between the provisions of the Smith Act and the Control Act. It is apparent, therefore, that the Communist Control Act of 1954 is not in conflict with, nor can it be construed as amending the Smith Act by implication.

C. The Enactment of the Communist Control Act of 1954 Does Not Deprive Defendants of a Fair and Impartial Trial.

It is appellants' further contention that, since the Congress of the United States has legislatively determined, in Section 2 of the Control Act, that the Communist Party does in fact advocate the overthrow of the Government by force and violence, the appellants were deprived of an opportunity of defending against that particular essential element of the offense with which they were charged.

The appellants have apparently made the erroneous assumption either that the provisions of the Smith Act must be read in conjunction with all the sections of the Communist Control Act, that is, that both statutes constitute a single law, or, that the Control Act specifically amends certain provisions of the Smith Act. The Government has already shown that there has been no amendment and at a further point in this brief will discuss, in some detail, its contentions that by no stretch of the imagination may the Control Act be viewed as being *in pari materia* with the Smith Act (*infra*, pp. 117 et seq.), as the appellants would have the Court believe.

The appellants argue in effect that legislative findings of fact have the force of law, in and of themselves. Whatever may be the effect of the "Findings of Fact" with regard to the Communist Control Act, these appellants were not precluded from raising the defense that the Communist Party does not, in fact, teach and advocate the violent overthrow of the Government of the United States. In fact a substantial part of the defense

case was an attempt to disprove the overwhelming evidence offered by the Government which established the violent revolutionary objectives of the Party. An examination of appellant's contentions indicates that they assume that the "Findings of Fact" found in Section 2 of the Control Act are such as would estop rebuttal. Such a contention is not borne out by any reported case. See e. g. *American Communications Association, et al.* v. *Douds*, 339 U. S. 382, 400.

In support of this assumption, appellants also rely upon *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531 (C. A. D. C.) reversed and remanded 351 U. S. 115 as standing for the proposition that the legislative findings are binding on the court in all proceedings in which the nature of the Communist Party is in issue. (App. Br. 167-168). Such is not the purport of the *Communist Party* case. Although the court did point out that "if it appears Congress has power over the subject matter of a statute, and if the findings of fact are not baseless but are based upon extensive investigation, the courts are to adopt these findings", nothing in the decision indicates that the courts are precluded from making independent findings based on the evidence presented at the trial. In the *Communist Party* case the Subversive Activities Control Board did not rely upon the Congressional findings but made independent findings "based upon the evidence adduced before it".

In the instant case the Government had and carried the burden of proving all of the essential elements of the offense charged, just as if the Communist Control Act had never been passed, and the appellants had a full and ample opportunity to rebut the Government's proof, which they failed to do.

Having taken the first erroneous step, it became necessary for the appellants to take a further step and claim that these "Findings of Fact" of the Control Act must now be propelled bodily into a different statute, the Smith Act which was enacted fourteen years before the Control Act for an entirely unrelated purpose. On its face such an assumption is without foundation.

That there exists in the United States some antagonism and hostility to the doctrines of communism on the part of the American citizenry is not the prime issue. It is true, as was pointed out by this Court in its decision in *Flynn*, the increasingly popular belief that communism is committed to the overthrow of our Government by force and violence has found its expression in the Internal Security Act of 1950 (64 Stat. 987) and the Communist Control Act of 1954. However, the issue which confronts us now is whether it can be said that the existence of this belief on the part of the American people, and the enactment of the two above-described statutes by Congress form a sufficient basis in the law, as appellants contend (App. Br. 169), for a reversal of these convictions.

For a proper analysis of this question we turn to the opinion of Judge Learned Hand in answer to a similar contention made by the defendants in the *Dennis* case. At page 226, he stated as follows:

> "Next, it is urged that it was impossible in any event to get an impartial jury because of the heated public feeling against Communists. That such feeling did exist among many persons—probably a large majority—is indeed true; but there was no reason to suppose that it would subside by any delay which

would not put off the trial indefinitely. The choice was between using the best means available to secure an impartial jury and letting the prosecution lapse. It was not as though the prejudice had been local, so that it could be cured by removal to another district; it was not as though it were temporary, so that there was any reasonable hope that with a reasonable continuance it would subside. Indeed, as it turns out, it is probable that the trial was at a less unpropitious time than any that has succeeded it, or is likely to follow. Certainly we must spare no effort to secure an impartial panel; but those who may have in fact committed a crime cannot secure immunity because it is possible that the jurors who try them may not be exempt from the general feelings prevalent in the society in which they live; we must do as best we can with the means we have."

Similarly in *Flynn* the Court pointed out that to hold otherwise would be tantamount to a judicial proscription of the Smith Act. In refuting the defendant's contention in the *Flynn* case that there could be no proper trial of Communist Party members until public opinion concerning communism subsides, Mr. Justice Harlan stated:

"We think there is nothing in our concepts of constitutional due process which leads us to any such weird result."

In *United States* v. *Lightfoot*, 228 F. 2d 861 (C. A. 7) certiorari granted 350 U. S. 992 appellant raised substantially the same argument with regard to the Communist Control Act. The Court readily disposed of the contention at page 870:

"In effect, it is defendants' position that all per-

sons subject to prosecution under the Smith Act are immunized from prosecution indefinitely or as long as the Communist Control Act remains a part of the laws of this nation. We do not agree."

D. The Communist Control Act of 1954 and the Smith Act Are Not in Pari Materia.

Appellants contend that "the two acts taken together describe the group to be attainted and provide punishment by way of fine and imprisonment" (App. Br. 166), and that the effect of such a reading together "is to convert the provisions of the Smith Act involved in the instant indictment into a bill of attainder" (*Ibid*).

In the case of *United States* v. *Lightfoot, supra,* a Smith Act case, this issue was raised by defense counsel during the pretrial hearing. Counsel there urged that the indictment should be dismissed because the Communist Control Act of 1954 is "clearly *in pari materia* with the membership provision of the Smith Act, and as a result constitutes a Bill of Attainder and violates the First Amendment and the due process clause of the Fifth Amendment of the Constitution." It was argued that the Smith Act must be read in conjunction with the Control Act and that when so read it would constitute an unconstitutional application of the law to the defendant.

Lightfoot's argument was similar to appellants' contention in that he contended that the Communist Control Act eliminates the necessity of proof by the Government, in Smith Act cases, that the Communist Party teaches and advocates the overthrow of the United States Government by force and violence. This he con-

tended deprived him of the opportunity to disprove this element, an opportunity which was available to him prior to the enactment of the Control Act (App. Br. 165-167).

It is a generally accepted rule of statutory construction that, when statutes relate to the same person or thing, or to the same class of persons or things, and are common in purpose and scope, such statutes are *in pari materia* and should be considered together as though they constituted but one law. *Rosenberg* v. *United States*, 346 U. S. 273; *United States* v. *C. I. O.*, 335 U. S. 106.

However, this rule is used solely for the purpose of ascertaining legislative intent and will not be applied by the courts for the purpose of defeating the clear legislative intent of each statute. Nor, will it be invoked where the language of the statute is clear and unambiguous and its application is certain from that language. *Northern Pacific Railroad Co.* v. *United States*, 156 F. 2d 326, 328, and citations therein).

Similarly, the principle of *in pari materia* may not be used to delimit the scope of a prior statute by a later enactment where it is clear that the subsequent statute was not intended to serve as a restriction on the prior statute. (See *People ex rel Pellow* v. *Byrne*, 261 N. W. 326, 328, and citations therein).

A basic and strict requirement of the *in pari materia* principle is that the subject matter of both statutes be identical, and that the two statutes stand on the same footing in the mutuality of their application to the same individual or classes, relative to the same conduct. (See Sutherland on Statutory Construction, 3d Ed. Vol. 2, Sec. 5202, p. 535). This principle is clearly stated in

Corpus Juris Secundum, Statutes, Vol. 82, Sec. 366 (a), pp. 802-803, thusly:

> "Statutes which relate to the same person or thing, or to the same class of persons or things, or which have a common purpose are in pari materia. On the other hand, statutes are not in pari materia which do not relate to the same subject and which have no common purpose and scope; and, although an act may incidentally refer to the same subject as another act, it is not in pari materia if its scope and aim are distinct and unconnected."[62]

In order for the Communist Control Act of 1954 to have any impact upon the Smith Act, there must be, between the two Acts, strict identity of subject matter, persons or classes, or persons affected by them, scope, purpose and aim, and the reading of them together must be necessary to clarify ambiguities which cloud congressional intent. As stated in Corpus Juris Secundum, *Id.* at page 814:

> "* * * [this] rule of construction may not be applied to narrow the compass of one statute by reference to another non conflicting and non repealing act, and restrictions placed on a power in one instance cannot be extended to another case for which they were not intended and for which another provision is made."

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[62] For further reference see: *Interstate Commerce Commission* v *Railway Labor Executives Association*, 315 U. S. 373, 380; *United States* v. *State of Louisiana*, 290 U. S. 70, 82; *United States* v. *Keegan*, 141 F. 2d 248, 253 (C. A. 2) reversed on other grounds and remanded 325 U. S. 478; *Capone* v. *United States*, 51 F. 2d 609, 614 (C. A. 7) certiorari denied 284 U. S. 669; *United States* v. *Gruber*, 39 F. Supp. 291, 294 (S. D. N. Y.); *Louisiana* v. *Mississippi*, 202 U. S. 1.

As pointed out previously (*supra*, p. 112), neither of these statutes conflict with the provisions of the other. There is a vast difference of subject matter; there is an obvious difference between the classes of persons to which they apply; and the scope, aim, and purpose of each statute is clearly different from that of the other.

We submit therefore that there is nothing in these two statutes which would justify application of the principle *in pari materia*. See *Capone* v. *United States*, 51 F. 2d 609 (C. A. 7), certiorari denied 284 U. S. 669, where the court stated:

> "Surely it cannot be said that statutes defining crimes are in pari materia merely because there is a likeness of subject matter. There must be identity of elements constituting the crime. *Identity, not similarity, must be the test in determining whether statutes defining crimes are in pari materia.* If one statute which defines a crime requires an element not present in another criminal statute, separate crimes are defined." (Emphasis added.)

CONCLUSION

We respectfully submit that the judgments of conviction as to all appellants should be affirmed.

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APPENDIX A

Organization chart of Communist Party United States of America, 1945-1948.

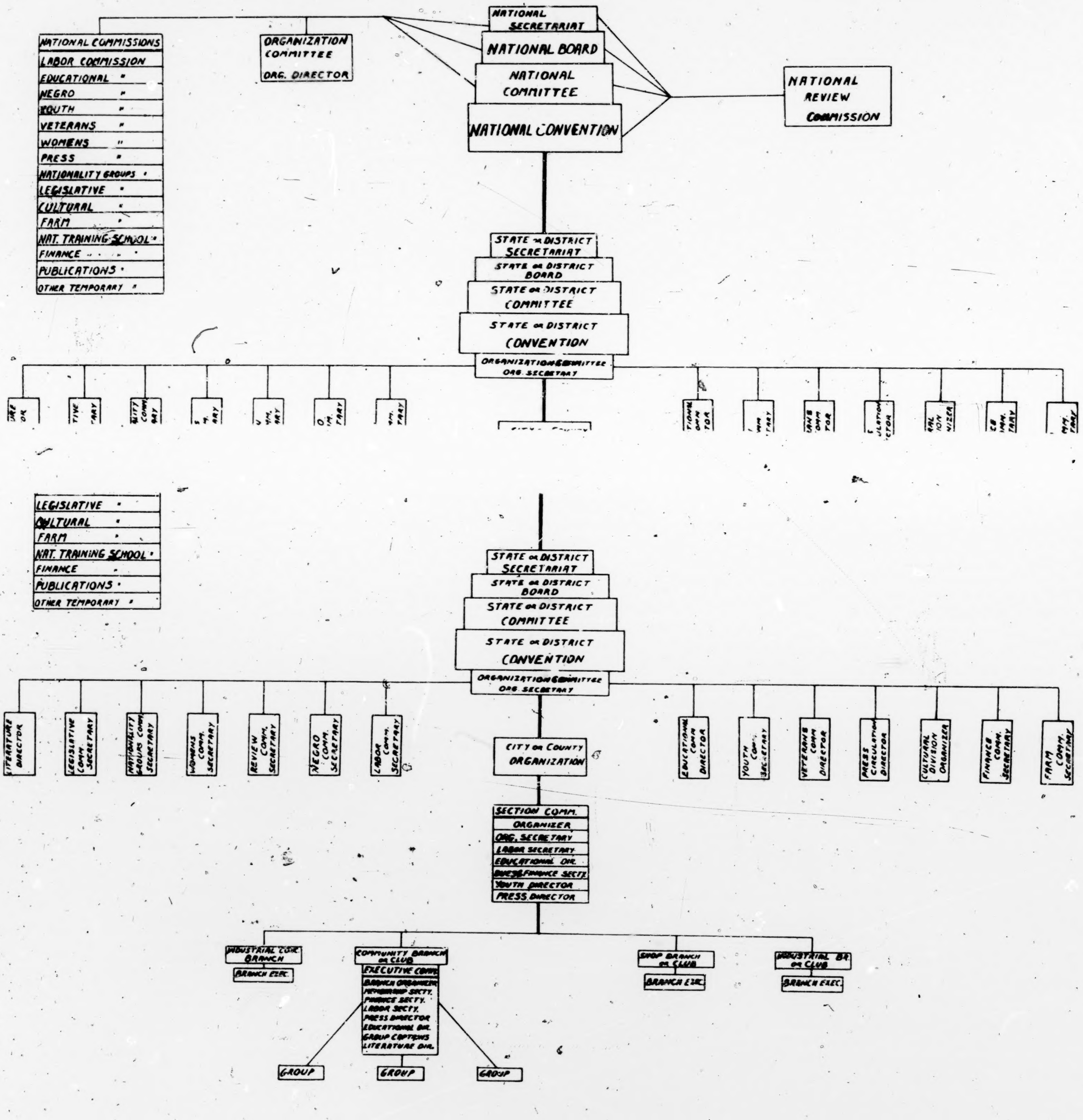
(PHOTOPRINT)

[*For convenience of Court and Counsel photoprint is bound in on the opposite page.*]

(p. 123)

Appendix A

ORGANIZATION CHART
OF
COMMUNIST PARTY - USA
1945-1948



Finding on Issue of Clear and Present Danger

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Criminal No. 9111

UNITED STATES OF AMERICA

v.

SIMON SILVERMAN, a/k/a Sid Taylor, et al

There is sufficient before me: in the record of this case, in the testimony of experts submitted by the defendants and in matters relative to world conditions of which I take judicial notice, to pass upon the issue of clear and present danger. Both Judge Hand, then Chief Judge of the United States Court of Appeals (2nd Circuit), and the United States Supreme Court in *Dennis* v. *United States* and both Judge Dimock for the Southern District of New York and Judge Harlan, now Justice Harlan, for the United States Court of Appeals (2nd Circuit) in *United States* v. *Flynn, et al* took judicial notice of world conditions at the time of the indictments in those Smith Act cases. I find in reviewing those conditions as of March 4, 1955, the date of the return of the indictment in this case, that there had been no substantial change in the basic positions of the Free and Communist worlds. Russia, by far the most powerful of European nations, had been a convert to communism for more than thirty-five years; its leaders were the most devoted and potent

proponents of the faith; its avowed objective had been and continued to be to bring within its exclusive power and control all of the nations of the earth. Communist China the most powerful nation in Asia, dedicated to the same faith, was pursuing aggressive tactics in the Far East particularly in Southeast Asia.

While there had been a truce in Korea which, for the time being, reconverted the hot war to a cold war and the settlement of the war in Indo-China placed added thousands of square miles and hundreds of thousands of people under the Communist yoke, these were but phases in the on and off pressure exerted here and there in accordance with Communist strategy for world domination. Threats were being made by Communist China to take over Formosa by force; and, contrary to the terms of the Korean truce, extensive military and air force installations were being established in menacing proximity to South Korea and Japan. The United States prompted by considerations of national security had treaty commitments with the free nations of the Pacific. It had similar obligations in Western Europe and the Middle East where Russia was giving encouragement to international strife and discord. The Communist countries had made and continued to make the United States the object of all manner of calumny and abuse; the United States was continuously charged with aggressive designs against other nations; its efforts to re-establish their economic stability were repeatedly set down as a scheme to enslave them; it was singled out as the chief enemy of the faith; and though the communists asserted that the United States was eventually doomed, it was still the formidable protagonist of the decadent system which communism would

supplant. Any border fray and any diplomatic incident might provide a spark in the tinder-box and ignite a war of survival. While the Judicial is not bound by the findings of the other branches of the Government, it may be noted that, with the support of the overwhelming mass of the people of this country, the Legislative and Executive have maintained a military, naval and air establishment costing billions of dollars per annum to defend this country against communist aggression. This has not been the result of baseless public clamor—a thing which the court must resist.

The claims of the defendants as to the absence of a clear and present danger were ably presented and were very persuasive in urging that there is now no forseeable probability of an economic depression such as was experienced in the 1930's which a revolutionary group could seize upon as a suitable time to attempt to overthrow the Government by force and violence. With regard to their other claims relative to the Communist Party in the United States and the conclusion that the relationship between this country and the Communist countries had so improved that armed conflict was out of the question, I am unable to agree. The zigs and zags of Communist tactics, now warlike, now peaceful; now hostile, now friendly, are temporary means to a pragmatic end in achieving the unrenounced and undisclaimed objective of world domination through armed aggression or the threat of it. The prospect of the activities of a Communist group within the United States in aid of and in conjunction with a communist nation at war with the United States cannot be dismissed as of so little consequence that it cannot be considered a clear and present danger.

Finding on Issue of Clear and Present Danger

If, therefore, the jury, within the instructions of the court's charge, should find that the defendants or any of them are guilty of a violation of the statute, I find as a matter of law that there is sufficient danger of a substantive evil that the Congress has a right to prevent, to justify the application of the statute under the First Amendment of the Constitution of the United States.

Dated at New Haven, Connecticut, this 24th day of March, A. D. 1956.

ROBERT P. ANDERSON
United States District Judge

APPENDIX C

Excerpts from Testimony

(497)

GRACE L. COLBERG, having been previously duly sworn, testified as follows:

Voir Dire examination by the Court:

Q. You are aware, are you not, that you are still under the oath that was administered last Friday? A. Yes, I am.

Q. Would you give the reporter your name and present address? A. Grace L. Colberg, Ansonia Road, Woodbridge.

Q. Now, are you employed anywhere? A. Housewife.

Q. You are a housewife? A. Yes.

Q. Your husband living? A. My husband is living, yes.

Q. He is employed where? A. He works for the TAD Jones Company.

Q. What sort of work? A. Traffic manager.

Q. Does he have the prospect of a pension or retirement rights with the company? A. There is nothing compulsory. He doesn't have to retire at 65.

Q. But he can and get retirement pay? A. Yes.

Q. Well, is there anything about his employment, what he does, or the fact that he is employed there and the fact that he has a pension or retirement benefit, that would cause you to be prejudiced in the case for or against any of the parties? A. I think not.

Q. Now, have you or has any member of your family or any of your friends been a party to or been interested in any legal action involving the United States, its officers, agents, or employees? (498) A. No, none that I know of.

Q. Have you or has any member of your family or close friend been the subject of investigation or charged by any of the following: United States Attorney's Office, the Federal Bureau of Investigation, the Department of Justice any other officer or agency of the United States Government, the House Un-American Activities Committee, the Committee of the House of Representatives of the United States, or the United States Senate? A. None whatsoever.

Q. Have you or has any member of your family contributed funds or rendered other assistance for the defense of any person or persons charged with an offense against the laws of the United States? A. Never.

Q. Are you a member or contributor to any organization that has for its object law enforcement, except as a taxpayer, like a police auxiliary? A. No.

Q. Or police association, anything of that sort? A. No.

Q. Neither you nor your husband have any connection with that? A. No.

Q. I am going to show you the Voir Dire Exhibit A,